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PREFACE.

to be fully and carefully read before them; and they present as their unanimous conclusion, that said Commissioners have kept themselves fully and fully within the pale of the powers and duties conferred.

The mingling together in condensed and intelligible form the Common and Statute Laws, Constitutional Provisions, and Court Decisions, and thus to place the whole body of all the Law within the reach of the people, was, in the opinion of your Committee, the great end aimed at by the Legislature, and this end has been kept in view, and, to every practicable and attainable extent, ably and efficiently accomplished by the Commissioners.

The Code so entirely extensive in its aims and purposes as to define in intelligible form and language out of the body of the great system of the Common Law the meaning of time whereof the memory of man runneth not to the contrary, mischiefs of rights, duties and obligations, and to present in intimate and close connection with Constitutional and Statutory Provisions, and the judicial exposition and construction thereof, for their redress and enforcement, is of rare, if not in the world, not presented, of original occurrence. Your Committee intend to say that no such attempt has been before so extensively attempted, that the citizen should be referred to a single volume of the Law in a single volume to be exactly informed of his rights in any and every exigency, and what his remedies for their enforcement and protection. And it need hardly be added that to the large degree which the offered Code accomplishes this great desideratum, it must and will commend itself to public approval and acceptance. As your Committee have been in the discharge of the duties devolved upon them, they caused each and every section of the Code to be read before them, and at the option, or upon the suggestion of any one of its members, its sections were discussed, canvassed, and amended, enlarged and restricted by a vote of the majority; and your Committee would add, that the codifiers themselves, being present, with scarce a single exception, approved, acquiesced in, and adopted all such suggestions, alterations, modifications, enlargements, or restrictions, as your Committee thought proper to

and what has been said, the limits of this report will not authorize your Committee to enlarge.

"the result of their investigations," and in full view of the delicate responsibilities thereby incurred, especially if their further suggestions shall receive Legislative approval, they do not hesitate, with entire unanimity, to report that the Commissioners have ably, faithfully, and efficiently discharged the arduous duties devolved upon them, and with like unanimity recommend the Legislative sanction of that which they present as "The Code of Georgia."

In the further anxious discharge of their duties, the thoughts of your Committee have been necessarily turned to consider the mode in and by which this can be accomplished.

The importance of a knowledge of the contents of the Code to a satisfactory and well considered vote for its adoption by each member of the Legislature, has,

PREFACE.

or another engaged in printing this Code, are now in the service of the Confederate States.

The errors alluded to have been corrected in an *Errata*, which will be found at the end of the Index, and to which the special attention of the reader is invited.

Many of the rules of the Supreme and Superior Courts, having been superseded by Legislative enactments and decisions of the Courts, and others being embodied in this Code under appropriate heads, it is believed that the rules of the Courts should undergo a revision by the proper authorities, and therefore they are omitted in this book.

As constant reference will be made to the Code, not only by the Bench and members of the State, but also by the various public officers and citizens who are not lawyers, the Commissioners have endeavored to make the Index copious and full, to distribute the matter under as many heads as it could be appropriately placed in order that what is sought for may be readily found.

The Commissioners submit to the people of Georgia the result of their labors and ask for it a patient examination, sufficient at least to understand the arrangement, and execution of the work; and if, after that, it be not approved by the public, they can but regret it.

REPORT OF THE COMMITTEE.

To the General Assembly of the State of Georgia:

The Committee appointed under the resolution of the last session of the General Assembly (assented to 16th Dec., 1859,) to meet the Commissioners appointed under an Act to provide for the Codification of the Laws of Georgia (approved 19th of Dec., 1858,) at the capital in Milledgeville, at least twenty days before the meeting of this present session of the General Assembly, for the purpose of revising and fully examining said Code, respectfully report:

That they have discharged the duty devolved upon them by said resolution, and the following is the result of their investigations:

Referring to said Act of 9th of December, 1858, your Committee find that it was made the duty of the Commissioners thereby appointed, to prepare for the people of Georgia a Code which shall, as near as possible, embrace in a compact form the Laws of Georgia, whether derived from the Common Law, the Constitution of the State, the Statutes of the State, the Decisions of the Supreme Court, or the Statutes of England, of force in this State.

With this enlarged and extensive chart of the powers and duties of the Commissioners before your Committee, and as directory, as well to compare with in the revision and examination of said Code, they caused each and every

on the one hand, pressed strongly upon us, while on the other, the utter impossibility of canvassing and considering, within any reasonable period of time, the four thousand paragraphs embraced therein, has presented an obstacle almost, if not absolutely insurmountable.

The mere reading of the manuscript, to inform and enlighten the Legislative mind as to its provisions, would occupy more than half the time limited by the Constitution to a Legislative session. Such reading, accompanied by the unquestioned power to amend and discuss according to the varied opinions and policy of our three hundred members, it need hardly be said, would occupy, to say the very least, more than all the time thus limited.

In the opinion, then, of your Committee, to read without amendment and discussion, would be idle and useless waste of time and money; and to read, amend, and discuss, impracticable.

Entertaining these opinions, and seeking the best solution of the difficulties, your Committee were naturally led to refer to the precedents set and acted upon by your sister States under similar circumstances. So far as such precedents will sanction and justify the recommendation to which they are led, they have been pleased to find that, in almost every State, Revised Codes have been adopted by a simple Legislative act, such as your Committee offer with this report, and upon the action and report of a committee, leaving other considerations, amendments, and discussions, of course, to the power and wisdom of the Legislature after publication.

With the exception of Virginia, your Committee believe that the action of the States has been uniformly such as they now recommend. In that State the other policy was pursued. Each section of its Code was subjected to a thorough revision, and separate adoption by its whole Legislative Department. The result was that its session was extended to a period over six months, and, of course, at a very great cost to the State. Your Committee, from a partial and cursory examination of the Code of that State, will be permitted to add, in no censorious spirit, that the benefit of this course is not manifest in the results. Other Codes adopted upon the plan which your Committee feel constrained to suggest, compare most favorably with this Code of Virginia.

Your Committee believe that they could give satisfactory reasons for the opinion entertained, that the labor, time, and money which might be expended in a Legislative reading, revision, and examination of the Code, might be really detrimental, rather than beneficial, to its efficiency, harmony, and entire plan and structure; but the limits of a report forbid all such attempts.

If the Code now presented were a new system of jurisprudence, or had the Commissioners attempted to graft upon our system any new features extracted from others and unharmonious with our own, or even if alterations in a well defined public policy had been attempted, your Committee would have paused, hesitated to recommend the mode of adoption suggested, without at least calling the special attention of the Legislature to such new and essential changes.

But at an early stage of our revision and examination, the codifiers announced the leading principle by which they had attempted to guide their labors, and your Committee report the same prominent in all the amendments and changes made at their suggestion. This principle was, to attempt no change or alteration in any well defined rule of law which had received Legislative sanction or judicial exposition, and to add no principle or policy which had received the condemnation of the former, or was antagonistic to the settled decisions of the latter.

The prominent and leading power of change exercised in construction and revision has been to cut and unravel *Gordian knots*, resulting from conflicting decisions of the Courts; to reconcile actual and apparently discordant legislation, harmonizing all conflicts to what seemed to be settled and favored public policy; to remedy existing defects by wise and harmonious provisions; and to supply omissions which the practice and experience of the Courts had discovered and made manifest in existing legislation. In short, the great end and aim has been to reconcile, harmonize, render consistent, the body of the law, so as to give shape and order, system and efficiency, to the sometimes crude, and often ill expressed, sovereign will of the State.

A settled conviction on the mind of your Committee that the codifiers have, to a degree as complete and perfect as might reasonably be expected, accomplished these and like ends, has won for the Code, as an *entirety*, their cordial and unanimous approval. Your Committee will not conceal that some particular sections and provisions have not met this unanimous concurrence. When differences arose, careful and anxious consideration and discussion followed, and minorities did not hesitate to yield—all being satisfied that, as a whole, the Code was entitled to and should receive, as it does receive, their unanimous and unqualified approbation and recommendation.

Your Committee fully believe that such would be the result of any examination and revision by the Legislative Department.

Your Committee do not deem it inappropriate to their duties to add, that the proper printing and publication of the Code, if adopted, becomes a subject of much interest and importance. Its plan and structure accompanies this report. A reference thereto will render most manifest the necessity, in the publication, of rigidly adhering to the plan. The numerical order of its paragraphs, and its references in one title, section, or paragraph, to another, must be preserved. In the use and value of the Code, its Index becomes of the highest importance.

These, and like considerations and reflections, lead your Committee to suggest that none other than those who constructed the Code, who devised its plan, and are familiar with its details and manuscript, can so well superintend its publication and prepare its Index. Your Committee have further to add, that it is provided in the Code itself that it shall not take effect until the 1st of October, 1861, thus giving time for its publication.

It is further provided, and your Committee think wisely, to meet any insufficiency of the Code, that all questions not embraced or provided for therein, shall be

decided and settled by existing laws, and that the Code does not interfere with, or in any manner abrogate or repeal, local legislation.

If in the views thus presented by your Committee, they shall have the concurrence of the Legislature, they present as part of this report, a bill to adopt the Code, and a bill to provide for its publication.

All of which is respectfully submitted.

HINES HOLT,
DANL. S. PRINTUP,
W. W. PAINE,

Committee on part of Senate.

GEO. N. LESTER,
ISHAM S. FANNIN,
W. G. DELONY,
M. W. LEWIS,
E. N. BROYLES,
C. J. WILLIAMS,

Committee on part of House.

THE ACT ADOPTING THE CODE.

An Act to approve, adopt and make of force, in the State of Georgia, a Revised Code of Laws, prepared under the direction and by authority of the General Assembly thereof; and for other purposes therewith connected.

SECTION 1. *The General Assembly of the State of Georgia do enact*, That the Revised Code of Laws prepared under its authority, by Richard H. Clark, Thos. R. R. Cobb, and David Irwin, Esqs., and revised and fully examined by its committee, and recommended and reported for adoption (the manuscript whereof now being on file in the Executive Department), be, and the same is hereby, adopted as the Code of Georgia; to be of force and take effect on the first of January, 1862.

Provided, That the adoption of the Code shall not operate so as to repeal an Act entitled "An Act to define the liability of the husband for the debts of the wife, and to define the liability of the property received through the wife for the debts of the husband existing at the time of the marriage," approved 28th February, 1856; or to punish any Judge, Justice, or Minister, for joining in marriage any female under the age of twenty-one without the consent of her father or guardian.

SECTION 2. *And be it further enacted*, That all laws and resolutions of a public and general character passed at this present session of the General Assembly,

be incorporated in and made part of said Code; and that the duties and powers of the codifiers be continued to that end, with authority to place the same in proper and appropriate form and connection, and to correct any conflicts which may be created thereby with its existing provisions. And that the performance of the further duties by said codifiers, as required in this section, be submitted to the revisal, examination and approval of His Excellency the Governor, before the publication of said Code.

SECTION 3. *Be it further enacted*, That the laws of the State of Georgia, having reference to the city of Savannah, etc., as codified by order of the City Council of Savannah, by the City Attorney of Savannah, be and the same is hereby, declared and made a part of the Code of Georgia and the laws thereof—the manuscript copy whereof is now on file in the Executive Office.

Assented to Dec. 19th, 1860.

G. F. Abbott
Attorney

D. F. Abbott
D. F. Abbott

PREFACE TO THE REVISED EDITION.

Atlanta

THE late war and its results, having produced so many radical changes in the Constitution and Laws of Georgia, a revision of the Code of the State became a matter of necessity. Prompted by an appreciation of that necessity, as well as the suggestions of his friends, the undersigned entered upon the work of carefully revising said Code, so as to exclude therefrom all such parts as had been repealed or superseded, and to include all laws passed since the adoption of said Code which were of force at the adjournment of the General Assembly of 1866, thus making the Code conform to the 5th Clause of the 1st Section of the 5th Article of the Constitution of Georgia, adopted by the Convention of 1865. All parts of the Code that have been repealed or superseded have been left out, and all laws still of force, that were never embodied in the Code, have been arranged under appropriate heads. The head-notes and sections have been reãrranged and re-numbered, and the new laws are included in brackets, with references to the authorities in which they may be found. A new and enlarged Index has been made, which, it is hoped, will enable any lawyer or citizen readily to find the law on any given subject. By resolution of the General Assembly, His Excellency Governor Jenkins appointed a committee, composed of Gen. Andrew J. Hansell, Col. Logan E. Bleckley, and Col. Nathaniel J. Hammond, to examine the work; and after a careful and elaborate examination, this committee of distinguished lawyers reported to His Excellency that the revision of the Code was thorough and accurate. The undersigned did not feel at liberty to change even the wording of the laws passed since the adoption of the Code, but embodied them just as they were enacted by the Legislature. The work has been tedious and difficult, and the undersigned does not claim that it is perfect; but, having done the very best that time, circumstances, and his official duties would allow, he places it before a generous profession and an indulgent people.

DAVID IRWIN.



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PART FIRST.

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REVISED CODE OF GEORGIA.

PART FIRST—THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE.

PART SECOND—THE CIVIL CODE.

PART THIRD—THE CODE OF PRACTICE.

PART FOURTH—THE PENAL LAWS.

PRELIMINARY PROVISIONS.

SECTION.

1. Obligation of laws.
2. Code—when and how to take effect.
3. When “from and after passage.”
4. Rules for construction of statutes.
5. Meaning of specific terms.
6. Future operation of laws.
7. Ignorance of law.

SECTION.

8. *Lex Loci*.
9. Comity of States.
10. Waiver of law.
11. Local laws.
12. Bonds of public officers.
13. Bonds taken by public officers.
14. Inspection of office books.

§ 1. The laws of this State shall be thus graduated in reference to their obligation:

First. The Constitution of the United States.

Second. Treaties entered into by the Federal Government within the scope of their power.

Third. Laws of the United States made in pursuance of the Constitution.

Fourth. The Constitution of this State.

Fifth. The Statutes of this State.

Sixth. Such portions of the Common, Civil, Canon, and Statute Laws of England as were usually in force in the Province of Georgia prior to 14th May, A. D. 1776, which were applicable to the condition and habits of the people so far as the same are consonant with our form of government, and are not repealed, modified,

or superseded by the provisions of [the Constitution and laws of this State.] (a)

Seventh. The customs of any business or trade shall be binding only when it is of such universal practice as to justify the conclusion that it became, by implication, a part of the contract.

Code—when
and how to
take effect.

§2. This Code shall take effect on the first day of January, 1863. All offenses committed prior to that date shall be tried and punished under existing laws; and all rights, or obligations, or duties acquired or imposed by existing laws, shall remain valid and binding, notwithstanding the repeal or modification of such laws.

When
“from and
after” pas-
sage.”

§3. Public laws which in themselves prescribe specifically that they are to take effect “from and after their passage,” shall not be obligatory on the inhabitants until published in some public gazette; and three days shall be allowed, from the date of publication, for every hundred miles distance from the Capital, before a knowledge of the law shall be presumed against the inhabitants.

Rules for
construction
of statutes.

§4. The following rules shall govern the construction of all statutory enactments in this State:

First. The ordinary signification shall be applied to all words, except words of art, or connected with a particular trade or subject-matter, when they shall have the signification attached to them by experts in such trade, or with reference to such subject-matter.

Second. The present or past tense shall include the future.

Third. The masculine gender shall include the feminine and neuter.

Fourth. The singular or plural number shall each include the other, unless expressly excluded.

Fifth. A joint authority given to any number of persons, or officers, may be executed by a majority of them, unless it is otherwise declared.

Sixth. A substantial compliance with any requisition of the Code, or laws amendatory thereof, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by the enactment.

Seventh. When a bond is required by law, an undertaking in writing, without seal, is sufficient; and in all bonds where the names of the obligors do not appear in the bond, but are subscribed thereto, they are bound thereby.

(a) See further on this subject, Constitution of Georgia, Art. 5, Sec. 1, Par. 5.

Eighth. When a number of days is prescribed for the exercise of any privilege, or the discharge of any duty, only the first or last day shall be counted; and if the last day shall fall on the Sabbath, another day shall be allowed in the computation.

Ninth. In all interpretations, the Courts shall look diligently for the intention of the General Assembly, keeping in view, at all times, the old law, the evil and the remedy. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

§ 5. The following meaning shall be given to each of the following words in all statutes, unless a different meaning is apparent from the context: Meaning
of specific
terms.

“*Property*” includes real and personal property.

“*Personal Property*” includes every thing except interests exceeding a lease-hold in lands, tenements, and hereditaments. Stocks in incorporated companies, though the object of the company is necessarily connected with the land, shall be held as personal property.

“*Person*” includes a corporation and persons of color.

“*Writing*” includes printing and all numerals.

“*Oath*” includes affirmation.

“*Signature,*” or “*Subscription,*” includes the mark of an illiterate or infirm person.

“*Lunatic,*” “*Insane,*” or “*Non-Compos-Mentis,*” each includes all persons of unsound minds.

“*Negro*” includes mulattoes.

“*Person of Color*” means all such as have an admixture of negro blood.

“*Justice,*” when applied to magistrates, means Justice of the Peace.

“*Preceding*” and “*Aforesaid*” mean generally next before, and “*Following*” next after, unless the context requires a different signification.

“*Month*” means a calendar month.

“*Year*” means a calendar year.

“*Seal*” shall include impressions on the paper itself, as well as impressions on wax or wafers. With the exception of official seals, a *Scrawl*, or any other mark intended as a seal, shall be held as such.

“*Highway,*” or “*Road,*” includes bridges upon the same.

§ 6. Laws prescribe only for the future; they can not impair the obligation of contracts, nor generally have a retrospective operation. Laws looking only to the remedy or mode of trial, may apply to contracts, rights, and offenses entered into, accrued, or committed prior to their passage; but in every case a reasonable time subsequent to the passage of the statute should be allowed for the citizen to enforce his contract, or protect his right.

§ 7. Laws, after promulgation, are obligatory upon all inhabitants of this State, and ignorance of the law excuses no one.

§ 8. The validity, form, and effects of all writings or contracts are determined by the laws of the place where executed. When such writing or contract is intended to have effect in this State, it must be executed in conformity to the laws of this State, excepting wills of personalty of persons domiciled in another State or country.

§ 9. The laws of other States and foreign nations shall have no force and effect of themselves within this State, further than is provided by the Constitution of the United States, and is recognized by the comity of States. The Courts shall enforce this comity, until restrained by the General Assembly, so long as its enforcement is not contrary to the policy or prejudicial to the interests of this State.

§ 10. Laws made for the preservation of public order or good morals can not be done away with or abrogated by any agreement; but a person may waive or renounce what the law has established in his favor, when he does not thereby injure others or affect the public interest.

§ 11. If there is a law in force at the time of the adoption of this Code, having entirely a local application, such local law is not repealed by this Code, unless so expressly declared.

§ 12. All bonds taken from public officers shall be kept in the places specified by law, and copies thereof shall be furnished to any person desiring them. Suits thereon may be brought by any person aggrieved by the official misconduct of the officer, in his own name, in any Court having jurisdiction thereof, without an order for that purpose.

§ 13. All bonds taken by public officers, under the laws of this State, shall be returned to the offices specified by law; and any person interested therein may bring suit thereon, in his own name, in any Court having jurisdiction thereof.

§ 14. All books kept by any public officer, under the laws of this State, shall be subject to the inspection of all the citizens of this State, within office hours, every day except Sundays and holidays.

PART I.

THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE.

TITLE I.

DIVISIONS AND JURISDICTIONS.

CHAPTER I.

OF THE BOUNDARY, SOVEREIGNTY, AND JURISDICTION OF THE STATE.

ARTICLE 1.—*The Boundary of the State.*

ARTICLE 2.—*The Sovereignty and Jurisdiction of the State.*

ARTICLE 3.—*Coast Survey.*

ARTICLE I.

THE BOUNDARY OF THE STATE.

SECTION.

- 15. Boundary of the State.
- 16. Line between Ga. and S. Carolina.
- 17. Between Ga., N. C., and Tennessee.

SECTION.

- 18. Between Georgia and Alabama.
- 19. Between Georgia and Florida.

§ 15. The boundaries of Georgia, as deduced from the Constitution of Georgia, the Convention of Beaufort, the Articles of Cession and Agreement entered into on the 24th April, 1802, the Resolution of the General Assembly of December 8th, 1826, and the adjudications and compromises affecting Alabama and Florida, are as follows:

From the sea, or the mouth of the river Savannah, along the stream thereof to the fork or confluence made by the rivers Keowee and Tugalo, and thence along said river Tugalo until the fork or confluence made by said Tugalo and the river Chattooga, and up and along the same to the point where it touches the northern boundary line of South Carolina and the southern boundary line of North Carolina, which is at a point on the thirty-

Boundaries
of the State
of Georgia.

Article 1.—The Boundary of the State.

fifth parallel of north latitude, reserving all the islands in said rivers Savannah, Tugalo, and Chattooga, to Georgia; thence on said line of said thirty-fifth parallel, from said point of intersection, and on and along said line west, to a point where it merges into and becomes the northern boundary line of Alabama—it being the point fixed by the survey of the State of Georgia, and known as Nickajack; thence in a direct line to the great bend of Chattahoochee river, called Miller's Bend—it being the line run and marked by said survey; and thence along and down the western bank of said Chattahoochee, along the line or limit of high-water mark to its junction with Flint river; thence along a certain line of survey, made by Gustavus J. Orr, a surveyor on the part of Georgia, and W. Whitner, a surveyor on the part of Florida, beginning at a fore-and-aft tree, about four chains below the present junction; thence along this line east, to a point designated Thirty-Seven Links North of Ellicott's Mound on the St. Mary's river; thence along the middle of said river to the Atlantic Ocean, and from thence to the mouth or inlet of said Savannah river, to the place of beginning; including all the lands, waters, islands, and jurisdictional rights within said limits, and also all the islands within twenty marine leagues of the sea coast.

Line between Georgia and S. C.

§16. The boundary between Georgia and South Carolina shall be the line described as running from the mouth of the river Savannah, up said river and the rivers Tugalo and Chattooga, to the point where the last-named river intersects with the thirty-fifth parallel of north latitude, conforming, as much as possible, to the line agreed on by the Commissioners of said States at Beaufort on the 28th April, 1787.

Line between Georgia and N. C. and Georgia and Tennessee.

§17. The boundary between Georgia and North Carolina, and Georgia and Tennessee, shall be the line described as the thirty-fifth parallel of north latitude, from the point of its intersection by the river Chattooga, west to the place called Nickajack.

Line between Georgia and Alabama.

§18. The boundary line between Georgia and Alabama shall be the line described from Nickajack to "Miller's Bend" on the Chattahoochee, and down said river to its junction with the Flint.

Line between Georgia and Florida.

§19. The boundary line between Georgia and Florida shall be the line described from the junction of the Flint and Chattahoochee rivers to the point Thirty-Seven Links North of Ellicott's Mound, on the St. Mary's river; thence down said river to the Atlantic Ocean.

Article 2.—The Sovereignty and Jurisdiction of the State.

ARTICLE II.

THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SECTION.

20. Jurisdiction as to places.

21. Jurisdiction as to persons.

SECTION.

22. Governor must defend suits—when.

§20. The sovereignty and jurisdiction of this State extends to all places within the limits of her boundaries, except so far as she has voluntarily ceded the same to the United States, or adjacent States, over particular localities.

Sovereignty and jurisdiction — as to places.

§21. The jurisdiction of this State and its laws extend to all persons while within its limits, whether as citizens, denizens, or temporary sojourners.

Jurisdiction as to persons.

§22. When any suit is instituted against the State, or against any person, in the result of which the State has an interest, under pretense of any claim inconsistent with its sovereignty, jurisdiction, or rights, the Governor shall, in his discretion, provide for the defense of such suit, unless otherwise specially provided for.

The Governor must defend suits in which the State is interested.

ARTICLE III.

COAST SURVEY.

SECTION.

23. Persons employed in coast survey.

24. Damages to land-owners—awarded.

25. Award—objections thereto, issue, etc.

SECTION.

26. How costs may be avoided.

27. Amount of the costs.

§23. Any person employed under the Act of the Congress of the United States, providing for a survey of the coasts, may enter upon lands and clear or cut timber within this State upon the same, for any purpose legitimately connected with, and requisite to effect, the said object: *provided* no unnecessary injury be done thereby, and all damages to the owner of the land be promptly paid.

Privileges of Coast Surveyors.

§24. If the parties representing the Government of the United States, and the owner or possessor of the land so entered upon, can not agree upon the amount to be paid for said damages, either party may complain in a summary manner to the nearest Justice of the Peace of the County within which the land lies, who shall associate with him two disinterested freeholders of the County—one

Damages to land-owners — how awarded.

Article 3.—Coast Survey.

to be named by each party interested—who shall, upon hearing the parties, and with or without view of the premises, as they may determine, proceed to assess and award the damages, if any: *provided* the party complaining shall give the opposite party ten days' notice, in writing, of the time and place, when and where, said complaint is to be heard, and the name of the freeholder by him selected.

Award—
objections
and trial
of issue.

§ 25. The said assessors, without unreasonable delay, shall file their award in the office of the Clerk of the Inferior Court of the County, which shall be conclusive upon both parties, unless objections are filed to the same within ten days after the filing of the award. If objections are filed, the other party shall have written notice; whereupon an issue shall be made and tried at the first term thereafter of said Court, under the same rules as other civil cases.

Costs avoid-
ed by tender
of damages.

• § 26. The person so entering upon lands may tender such amount as he chooses for the damage done, and if the damages finally assessed shall not exceed the sum tendered, the party complaining shall pay all costs.

Amount of
costs.

§ 27. The costs before the Justice and in the Inferior Court, shall be the same as are allowed by law in civil cases in said Courts.

CHAPTER II.

THE POLITICAL AND JUDICIAL DIVISIONS OF THE STATE.

ARTICLE 1.—*Counties.*

ARTICLE 2.—*Congressional Districts.*

ARTICLE 3.—*Judicial District and Circuits.*

Article 1.—Counties.

ARTICLE I.

COUNTIES.

SECTION.

28. Names and limits of Counties.
29. Cases belonging to new Counties.
30. Unexecuted processes transferred.
31. Officers cut off into new Counties.
32. Officers of adjacent County may act.
33. Juries for new Counties.
34. Extra tax in new Counties.

SECTION.

35. Who may qualify officers.
36. Executors, etc., cut off into new County.
37. When Counties are divided by a stream.
38. Offenses committed on water courses.
39. Offenses committed on boundary line.
40. Counties entitled to two Rep'sentatives
41. Representation from new Co.—when.

§28. The State is divided into the following Counties, whose Names and limits of Counties. boundaries and limits shall be ascertained by the several acts laying off the same, and those amendatory thereof—viz:

Appling,	Coffee,	Gwinnett,	Meriwether,	Sumter,
Baker,	Columbia,	Habersham,	Miller,	Talbot,
Baldwin,	Colquitt,	Hall,	Milton,	Taliaferro,
Banks,	Coweta,	Hancock,	Mitchell,	Tattnall,
[Bartow,] (a)	Crawford,	Haralson,	Monroe,	Taylor,
Berrien,	Dade,	Harris,	Montgomery,	Terrell,
Bibb,	Dawson,	Hart,	Morgan,	Telfair,
Brooks,	Decatur,	Heard,	Murray,	Thomas,
Bryan,	DeKalb,	Henry,	Muscogee,	Towns,
Bullock,	Dooly,	Houston,	Newton,	Troup,
Burke,	Dougherty,	Irwin,	Oglethorpe,	Twiggs,
Butts,	Early,	Jackson,	Paulding,	Union,
Calhoun,	Echols,	Jasper,	Pickens,	Upson,
Camden,	Effingham,	Jefferson,	Pierce,	Walker,
Campbell	Elbert,	Johnson,	Pike,	Walton,
Carroll,	Emanuel,	Jones,	Polk,	Ware,
Catoosa,	Fannin,	Laurens,	Pulaski,	Warren,
Charlton,	Fayette,	Lee,	Putnam,	Washington,
Chatham,	Floyd,	Liberty,	Quitman,	Wayne,
Chattahoochee,	Forsyth	Lincoln.	Rabun,	Webster,
Chattooga,	Franklin,	Lowndes,	Randolph,	White,
Cherokee,	Fulton,	Lumpkin,	Richmond,	Wilcox,
Clarke,	Gilmer,	Macon,	Schley,	Wilkes,
Clay,	Glasscock,	Madison,	Scriven,	Wilkinson,
Clayton,	Glynn,	Marion,	Spalding,	Whitfield,
Clinch,	Green,	McIntosh,	Stewart,	Worth.
Cobb,	Gordon,			Making 132 Counties.

§29. When a new County is organized, the jurisdiction of all suits pending in the County, or Counties, from which the new County has been laid off, of which, under the Constitution and Laws of this State, the new County should have cognizance, is transferred immediately to the corresponding Court in such new County, Cases to be transferred to new County.

(a) Acts of 1861, p. 101.

Article 1.—Counties.

together with all the Court papers pertaining thereto, to which shall be attached the certificate of the Clerk of the Court from whence they came, that they are the proper papers of the suit, and the amount of costs accrued therein, the amount then due, and by what persons paid; for which certificate the Clerk must receive, from the person asking the transfer, the costs then due, unless he makes oath that, owing to his poverty, he is not able to pay the costs.

Unexecuted process to be transferred to new County.

§ 30. All process (mesne or final) or paper requiring some official act to be done by any officer of the Counties from which the new County is taken, and which can not be done by reason of the creation of said new County, must, without delay, be transmitted by the same to the corresponding officer in the new County, and if proceedings have been had thereon, and not finally disposed of, the officer of the new County must proceed as though the paper had been originally in his hands; but publication of the times and places of sale, and proceedings of like character, shall be in the manner prescribed by law.

Officers cut off in new County to retain their commissions.

§ 31. All ministerial officers in commission, included within the limits of the new County, hold their commissions and exercise the duties of their office until their commissions expire and their successors are elected and qualified, unless there is more than one for the same office; and in new Counties organized entirely from one County, all the officers of the old County are authorized to exercise their respective duties in the new County until the proper officers are elected and qualified; and Justices of the Peace comprised in the new County, whose districts are not materially disturbed by the lines of the new County, retain their offices and their district until their commissions expire.

Officers of old County to act until officers of new County are qualified.

§ 32. When any new County, as organized, is without a person authorized to act as Clerk, or Sheriff, or both, a corresponding officer in any adjoining County may exercise the duties of such officer, in issuing, serving, and returning process, until said new County is supplied.

When there are no officers in new County, process—how issued and served.

Juries for a new County—how organized.

§ 33. The Justices of the Inferior Court of the new County, aided by the Clerks of the Superior and Inferior Courts and Sheriff, shall, without delay after their qualification, make a Grand and Petit Jury box, and draw therefrom, pursuant to law, panels [of jurors] (a) in time for the succeeding term of the Superior Court;

(a) Acts of 1865-6, p. 71.

Article 1.—Counties.

and if, by the organization of the new County, the panels already drawn for the old Counties are disturbed, the Justices of the Inferior Courts of said Counties, or two of them, or one, if only one remaining, may, at any time before the next term of said Courts, draw, to supply said deficiency, the requisite number of Grand and Petit Jurors.

§ 34. The Justices of the Inferior Court of the new County may levy, for the first year after their qualification, an extra tax, for County purposes, of such per cent. upon the State tax as may be necessary, according to their discretion and the terms of the act of organization. Extra tax in new County.

§ 35. The Governor may direct the *dedimus potestatum* for the qualification of said Inferior Court, to the Judge of the Superior Court of the Circuit, any Justice of the Inferior Court, or Judge of the County Court, or any Justice of the Peace embraced within its limits, and in default of either, to any Justice of the Inferior Court of an adjoining County, and the qualification under it is legal. Who may qualify new officers.

§ 36. Any executors, administrators, or guardians, making returns to the Ordinary of the old County, and residing within the limits of the new County when organized, may make their returns to, and perform all their official acts with, the Ordinary thereof; and when any such act is done, the jurisdiction is changed to the new County, and such trustee shall file with the Ordinary of the new County, to be recorded by him, a certified copy of all his acts from the Ordinary of the old County. Executors, etc., cut off.

§ 37. Whenever a stream of water is the boundary of a County, the jurisdiction of the County shall extend to the center of the main channel of such stream; and if an offense is committed on such stream, and the evidence on the trial does not definitely disclose in which County it was committed, the Courts of either County may maintain jurisdiction for the trial and punishment of the offender. When Counties are divided by a water course.

§ 38. Whenever an offense is committed on the waters of any river which forms a boundary between this and any other State, the whole of which river belongs to Georgia, the County which is situate on the side of the river opposite the point where the offense is committed has jurisdiction of the same; and if the evidence on the trial does not definitely disclose on which side of the line, between two Counties, at the place where it touches the river, the When water course divides Georgia from another State.

Article 1.—Counties.

offense was committed, the Courts of either County may maintain jurisdiction.

§ 39. This State claims jurisdiction of an offense committed on any of her boundary lines with other States for the County bordering on that part of the line where the offense was committed, and if doubtful as to which of two Counties (as set forth in the preceding Section), for either County, and will proceed to arrest, indict, try, and execute, until such other State shall make a demand for the accused as a fugitive from justice; in which event the progress of the case shall be suspended by order of the Governor until the question of jurisdiction is settled.

§ 40. The Counties of Bibb, Burke, [Bartow,] (a) Carroll, Chatham, Cherokee, Clarke, Coweta, Cobb, Columbia, Decatur, Floyd, Fulton, Gordon, Greene, Gwinnett, Hancock, Harris, Hall, Henry, Houston, Jackson, Meriwether, Monroe, Muscogee, Newton, Oglethorpe, Richmond, Stewart, Sumter, Talbot, Thomas, Troup, Walton, Walker, Washington, and Whitfield, being thirty-seven, are entitled to two Representatives; and all other Counties as the Constitution prescribes.

§ 41. There shall be no representation in either branch of the General Assembly from any new County until after the next regular election for members of the same, but the Senators and Representatives already elected from the Counties forming the new County shall serve out the term for which they were elected, without regard to their residence in or out of the old Counties; and all vacancies by death, resignation, or removal, shall be filled by the County where the member resided at the time of his election.

ARTICLE II.

CONGRESSIONAL DISTRICTS.

SECTION.

42. Congressional Districts.

SECTION.

43. New Counties—where attached.

§ 42. [Conforming to the last apportionment of members of the House of Representatives of the United States Congress, there shall be in this State seven Congressional Districts, constituted as follows, until changed by act of the General Assembly—viz:

The First District shall include the Counties of Appling, Ber-

(a) Acts of 1861, p. 101.

Article 2.—Congressional Districts.

rien, Brooks, Bryan, Bullock, Camden, Charlton, Chatham, Clinch, Coffee, Colquitt, Echols, Effingham, Emanuel, Glynn, Irwin, Johnson, Laurens, Liberty, Lowndes, McIntosh, Montgomery, Pierce, Tattnall, Telfair, Thomas, Ware, and Wayne.

The Second District shall include the Counties of Baker, Calhoun, Chattahoochee, Clay, Decatur, Dooly, Dougherty, Early, Houston, Lee, Macon, Marion, Miller, Mitchell, Pulaski, Quitman, Randolph, Schley, Stewart, Sumter, Terrell, Webster, Wilcox, and Worth.

The Third District shall include the Counties of Campbell, Carroll, Clayton, Coweta, Fayette, Haralson, Harris, Heard, Meriwether, Muscogee, Paulding, Talbot, Taylor, and Troup.

The Fourth District shall include the Counties of Baldwin, Bibb, Butts, Crawford, Henry, Jasper, Jones, Monroe, Newton, Pike, Putnam, Spalding, Twiggs, Upson, and Wilkinson.

The Fifth District shall include the Counties of Burke, Columbia, Elbert, Glasscock, Greene, Hancock, Jefferson, Lincoln, Morgan, Oglethorpe, Richmond, Scriven, Taliaferro, Warren, Washington, and Wilkes.

The Sixth District shall include the Counties of Banks, Clarke, Dawson, Fannin, Forsyth, Franklin, Gilmer, Gwinnett, Habersham, Hall, Hart, Jackson, Lumpkin, Madison, Milton, Pickens, Rabun, Towns, Union, Walton, and White.

The Seventh District shall include the Counties of Bartow, Catoosa, Chattooga, Cherokee, Cobb, Dade, DeKalb, Floyd, Fulton, Gordon, Murray, Polk, Walker, and Whitfield.] (a)

§43. If in the organization of a new County there is an omission to specify to which Congressional District it belongs, it shall be attached to that from which most of its representative population has been taken, according to the Federal basis, which shall be determined by the Governor, if necessary, at any time before legislation, to remedy the omission.

Where new
County be-
longs when
act is silent.

(a) Journal of Georgia Convention of 1865, p. 226; Acts of 1865-6, p. 36.

Chapter 1.—Who are Citizens.

ARTICLE III.

JUDICIAL DISTRICT AND CIRCUITS.

SECTION.

44. Judicial District and Circuits.

SECTION.

45. To what Circuit a new County belongs.

Judicial
District and
Circuits.

§ 44. The entire State constitutes one Supreme Judicial District, and is divided into sixteen Judicial Circuits in reference to the jurisdiction and sessions of the Superior Court; tables of which will be found in Part III., Title I.

To what Cir-
cuit a new
County be-
longs.

§ 45. If any new County is organized with an omission to attach it to any Judicial Circuit, it belongs to the Circuit from which most of its territory is taken.

TITLE II.

O F C I T I Z E N S H I P .

CHAPTER 1.—*Who are Citizens.*

CHAPTER 2.—*As to Expatriation.*

CHAPTER I.

W H O A R E C I T I Z E N S .

SECTION.

46. Who are citizens of Georgia.

47. Who are not white persons.

SECTION.

48. Persons prohibited from citizenship.

Who are cit-
izens of this
State.

§ 46. All white persons born in this State, or in any other State of this Union, who are, or may become, residents of this State, with the intention of remaining herein; all white persons naturalized under the laws of the United States, and who are, or may become, residents of this State, with the intention of remaining herein; all persons who have obtained a right to citizenship under former laws, and all children wherever born, whose father was a citizen of this State at the time of the birth of such children, or in case of posthumous children at the time of his death, are held and deemed citizens of this State.

Chapter 2.—Expatriation.

§47. Persons having one-eighth or more of negro or African blood in their veins, are not white persons in the meaning of this Code. Who are persons of color.

§48. No person transported or banished from other countries or States, within or out of the United States, for crime involving moral turpitude, are permitted to reside in or become citizens of this State. Who can not become citizens of this State.

CHAPTER II.

AS TO EXPATRIATION.

SECTION.

49. How citizenship may be renounced.
50. When citizenship ceases.

SECTION.

51. How citizenship is acquired.

§49. Except in time of war, every citizen shall have the right of expatriation, with a view to become a citizen of another State or country not a part of the United States, with which this State is at peace. The declaration or avowal of such intention, accompanied by actual removal, is held a renunciation of all his rights and duties as a citizen. How citizenship may be renounced.

§50. Until citizenship is acquired elsewhere, after compliance with the terms of Section No. 49, the person continues a citizen of Georgia and of the United States. When citizenship ceases.

§51. If a person, having been thus expatriated, acquires citizenship under some foreign power, he and his descendants who go with him for the purpose of residence can be a citizen of this State again only after a residence of three years herein, and taking the oath of allegiance, as in case of other foreigners. How citizenship may be again acquired.

TITLE III.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.—*The Governor : his Powers and Duties.*

CHAPTER 2.—*The Executive Office and Secretaries.*

CHAPTER 3.—*State House Officers—Secretary of State, etc.*

CHAPTER 4.—*Offices connected with the Executive Department.*

CHAPTER 5.—*Regulations as to all Executive Offices and Officers.*

CHAPTER I.

THE GOVERNOR: HIS POWERS AND DUTIES NOT SPECIFIED IN THE CONSTITUTION.

SECTION.

- 52. Governor's inauguration.
- 53. His oath to be taken.
- 54. He may call out the militia.
- 55. May call out militia and volunteers.
- 56. Shall cause fugitives to be arrested.
- 57. Deliver fugitives from other States.
- 58. Delivery suspended in certain cases.
- 59. Fugitives not demanded.
- 60. Warrants for the arrest of fugitives.
- 61. He may offer rewards.
- 62. May appoint Commissioners of Deeds.

SECTION.

- 63. He must commission officers.
- 64. Shall issue grants to lands.
- 65. Shall protect the public property.
- 66. Shall appoint officers and fill vacancies.
- 67. His Secretaries and other officers.
- 68. Officers of public institutions.
- 69. He may employ special agents.
- 70. May suspend collection of taxes.
- 71. Payments from the Treasury.
- 72. Certain records to be kept.
- 73. Seal of the Executive Department.

Governor's
inauguration

§ 52. The Governor elect shall begin the discharge of his duties from the time of his inauguration. The ceremony of inauguration shall take place during the first week of the session of the General Assembly next after the election, and on such day of that week as the General Assembly, by joint resolution, appoints. On failure of appointment, it takes place at 12 o'clock, meridian, on Saturday of that week, unless prevented by providential causes.

His oath to
be taken in
presence of
the Legisla-
ture.

§ 53. The oath prescribed by the 5th Paragraph of the 1st Section of the 3d Article of the Constitution of this State, and the oath to support the Constitution of the United States, shall be taken by the Governor elect in the presence of the General Assembly.

May call out
military—
when.

§ 54. It is the duty of the Governor to see that the laws are executed. For this purpose he has power, as Commander-in-Chief, to call out the military whenever, in his discretion, the due enforcement of the process of the Courts is so resisted and set at defiance as to require such interposition.

May call out
the military
in case of
insurrection
or invasion.

§ 55. In case of invasion or insurrection, the Governor has power to call out all volunteer military companies, or the militia, or both, for the defense of the State, until such time as the General Assembly meet; and when so called into action, he has power to make all necessary provision for their transportation, accommodation, equipment, and support.

Shall cause
the arrest of
fugitives
from foreign
countries.

§ 56. Whenever there is found within this State a fugitive from justice from a foreign State, and by the treaty stipulations of the United States such person is to be surrendered up to

Chapter 1.—The Governor: his Powers and Duties not specified in the Constitution.

the authorities of such foreign State upon requisition from the proper officers, the Governor, by his warrant, shall cause him to be arrested and delivered over to such officer.

§ 57. It is the duty of the Governor, under his warrant, to cause to be arrested and delivered up to the proper officers of any other State of the United States, any fugitive from justice from said State, upon demand made of him by the Executive of such other State in the manner prescribed by the laws and Constitution of the United States. And if such fugitive shall have assumed another name in this State, and the Governor is satisfied, by evidence on oath filed in his office, of the identity of such person with the fugitive demanded, he shall state the fact in his warrant for the arrest.

He shall cause fugitives from other States to be arrested and delivered.

§ 58. If any person demanded as a fugitive from justice is, at the time of such demand, under prosecution for an offense against the laws of this State, the Governor shall suspend his delivery until the issue is determined as to his guilt, and if condemned, until he shall have suffered the penalty of the law imposed.

Shall suspend the delivery of a fugitive in certain cases.

§ 59. When a person, charged with the commission of an offense in some other State, shall flee into this, and is pursued and caught, or some person in this State, finding, shall arrest him, it is the duty of the Governor, on oath filed in his office of the commission of the offense, and the identity and locality of the party, to issue his warrant for his arrest, as in other cases, and command his lodgment in any jail in the State, for as long as twenty days, and if, at their expiration, there is no formal demand made by the Governor of the State where the offense is alleged to be committed, he shall be discharged from custody; but upon affidavit, made before any proper officer, of the commission of the offense and of such intended application, the accused shall be held under it five days.

How fugitives not demanded shall be disposed of.

§ 60. When the Governor or other officer issues such, or any other warrant of arrest, it is the duty of the Sheriffs, their Deputies, Coroners, and Constables, to execute them when placed in their hands.

Officers must execute warrants.

§ 61. The Governor shall, in his discretion, offer, and cause to be paid, rewards for the detection or apprehension of the perpetrator of any felony committed within this State; but no such reward shall be paid to any officer who shall arrest such person in the regular discharge of his duty, by virtue of process in his

May offer rewards for the arrest of felons.

Chapter 1.—The Governor: his Powers and Duties not specified in the Constitution.

hands to be executed, nor to any person who has arrested the offender previous to the publication of the reward.

§ 62. He shall have power to appoint, in other States and Territories of the United States, Commissioners to take and certify the acknowledgment or proof of deeds or other conveyance of property in this State, of depositions under commissions or otherwise, of powers of attorney, (of wills executed by persons devising or bequeathing property within the State,) and of other instruments in writing required to be attested under the laws of this State.

May appoint Commissioners of Deeds in other States.

§ 63. He shall grant commissions to all such officers of this State, including Senators and Representatives in Congress, as are required to hold them, and in all cases he may, in his discretion, issue a *dedimus potestatem* to such officers as are authorized to administer oaths requiring the qualification of the officer elect, as provided by law, and to issue to him his commission. The forms of all commissions shall be in the discretion of the Governor. Commissions thus issued are final, except where the Constitution and laws otherwise provide.

Must grant commissions to officers elect in this State.

§ 64. He shall issue all grants to lands under the laws of this State, but such shall not be conclusive, but subject to the investigation of the Courts; and whenever such are declared by the proper Court to have been wrongly issued, it is his duty to issue another grant in accordance with such decision, if it so requires.

Shall issue grants to land.

§ 65. He shall have general supervision over all property of the State, with power to make all necessary regulations for the protection thereof, when not otherwise provided for. He must assign rooms in the Capitol to all officers who must hold their offices there, and, in the absence of any legislative provision, designate the purpose for which other rooms are to be applied.

Shall supervise public property and assign to officers rooms in the Capitol.

§ 66. He shall appoint all officers and fill all vacancies, unless otherwise prescribed by the Constitution and laws. All appointments to discharge a public duty, by the General Assembly, or by the Governor under its authority, are declared to be offices within the meaning of the Constitution.

Shall appoint officers and fill all vacancies not provided for.

§ 67. He has the power of appointing the following officers, who shall hold their offices during the time for which he is Governor, subject to be removed at his pleasure—viz:

May appoint and remove his Secretaries and other officers.

[Two] (a) Secretaries of the Executive Department;

(a) Constitution, Art. 3, Sec. 2, Clause 10.

Chapter 1.—The Governor: his Powers and Duties not specified in the Constitution.

A Messenger for his office ;

A State Librarian ;

A guard for the Capitol buildings ;

A person to keep the Capitol grounds and other State property at the seat of Government in proper order.

§68. He shall also appoint all the officers of the following State Institutions named in this Code, and laws hereafter enacted amendatory thereof, unless menials, servants, day-laborers, or otherwise required—viz:

May appoint trustees of the Asylums and officers of the W. & A. R. R., and keeper of the arsenals.

Officers of the Penitentiary ;

Trustees of the Lunatic Asylum ;

Trustees of the Asylum for the Deaf and Dumb ;

Trustees of the Asylum for the Blind ;

Officers of the Western and Atlantic Railroad ;

Keepers of the Arsenal and Public Arms.

§69. And he has power to engage the services of any competent person for the discharge of any duty required by the laws, and essential to the interests of the State, or necessary, in an emergency, to preserve the property or funds of the State.

May employ special agents — when.

§70. The Governor may suspend the collection of the taxes, or any part thereof, due the State, until the meeting of the next General Assembly, but not longer ; nor shall he otherwise interfere with the collection thereof.

May suspend the collection of taxes.

§71. All payments from the Treasury, unless otherwise provided, shall be made upon the warrant of the Governor, and he may withhold his approval on any account audited and certified by the Comptroller General. The warrant shall always specify on what appropriation or fund it is drawn.

Payments from the Treasury — how made.

§72. The Governor shall cause to be kept and preserved in the Executive Office the following books of record :

Shall cause to be kept a journal of his official acts.

1. A journal or minute book, showing all of his official acts.

2. A book of appropriations, in which shall be entered a full account of all annual appropriations, setting forth the amounts under their appropriate heads, together with the date of his warrant for such appropriation, and in whose favor drawn.

A book of appropriations.

3. A book giving a statement of the public debt of the State, the dates and numbers of the bonds issued, in whose favor, and for what amounts, the date of payment and the disposition thereof ; also, a full and accurate account of all sums of money that are set apart as a sinking fund for the redemption of the public debt, par-

A book of the public debt.

Chapter 1.—The Governor: his Powers and Duties not specified in the Constitution.

ticularly setting forth the amount for the several specific purposes, when drawn, and in whose favor drawn.

A book of bonds and debts due the State. 4. A book in which shall be kept copies of all bonds of agents, disbursing public funds; also a schedule of all bonds and other evidences of debt due to the State, and the disposition made thereof.

A book of commissions of officers. 5. A book of commissions, showing the dates when issued, for all officers, civil and military, in this State.

A book of the Educational Fund. 6. A book showing the exact condition of the Educational Fund of this State, and the annual income thereof.

A land book. 7. A book or books containing a list of the respective numbers, districts, sections, and Counties of the several lots of land disposed of by the several land lotteries, and the names of the drawers of each, to whom and when granted, and a similar schedule of all lands sold by the State, by whom purchased, and to whom and when granted.

An index to papers of file 8. He shall also keep, and cause to be carefully filed away, properly marked or numbered, all documents appertaining to his office, whether there as the place of deposit or received by mail or express, and keep a book as an index or key to the same.

Other necessary books. 9. And any other books or files that, in his judgment, his Department needs.

Executive seal. §73. There shall be a seal of the Executive Department. The device shall be the same as that now used therein, and shall not be altered except by authority of the General Assembly.

CHAPTER II.

THE EXECUTIVE OFFICE AND RESIDENCE OF THE GOVERNOR.

SECTION.

74. Where Executive Office must be kept.

SECTION.

75. Where the Governor must reside.

Where the Executive Office shall be. §74. The Executive Office shall be in the State House at the seat of Government. If, from any cause, there is no State House, or it has to be abandoned, then at such place at the seat of Government, as the Governor may direct, and not elsewhere, unless made necessary from invasion, insurrection, pestilence, or rebellion.

Governor's residence. §75. The Governor shall reside at the seat of Government during his term of office.

Article 1.—The Secretary of State.

CHAPTER III.

THE SECRETARY OF STATE, TREASURER, AND COMPTROLLER
GENERAL.ARTICLE 1.—*The Secretary of State.*ARTICLE 2.—*The State Treasurer.*ARTICLE 3.—*The Comptroller General.*

ARTICLE I.

OF THE SECRETARY OF STATE.

SECTION.

76. Bond of Secretary of State.
 77. Must reside at the Capital.
 78. Must furnish applicants with records.
 79. He shall receive no perquisites.

SECTION.

80. Sec. State and Surv. Gen. consolidated.
 81. The Great Seal of the State.
 82. Other duties.
 83. Shall not speculate in wild lands.

§ 76. Before entering on the duties of his office he shall execute a bond with sufficient securities, to be approved by the Governor, in the sum of ten thousand dollars, conditioned for the faithful performance of all the duties of his said office and all such duties as shall be required of him by the General Assembly or the laws of this State, and for a faithful account of all the public money or effects that may come into his hands during his continuance in office. It shall be filed in the Executive Office, and a copy thereof, certified by one of the Governor's Secretaries, under the seal of the Executive Department, shall be received in evidence in lieu of the original in any of the Courts of this State.

Bond of the
Secretary of
State.Certified
copy evi-
dence.

§ 77. He shall be provided with suitable apartments in the State Capitol, furnished at the State's expense. He shall reside at the Capital, and keep his office open daily, Sundays and holidays excepted.

He shall
keep his of-
fice in the
Capitol.

§ 78. He shall furnish to all applicants, upon the payment of the prescribed fees, copies of all records and public documents within his office, and shall attach the Great Seal of the State to such transcripts as the Governor or General Assembly may direct.

He shall
furnish copy
of records.

§ 79. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him, and paid into the State Treasury.

He shall
have no per-
quisites.

§ 80. [The offices of Secretary of State and Surveyor General are consolidated, and the Secretary of State is required to discharge the duties of *both of said offices.*] (a)

Sec. of State
and Survey-
or General
consolidated

Article 1.—The Secretary of State.

1. It is his duty to keep the Great Seal of the State, the original Acts passed by the General Assembly, and all the public records of the State not appertaining specially to other offices. He shall look to and preserve the records and papers belonging to the Senate and House of Representatives. He shall see that the original Journals of both Houses are deposited in and kept in his office.

He shall keep the seal and certain records and papers.

He shall attest grants and other papers.

2. He shall attest all grants, and other public documents requiring the Great Seal of the State, issuing from the Executive of the State.

Shall keep a record of grants.

3. He shall keep a record, in proper books, of all grants issued by the State.

Shall keep bonds.

4. He shall keep safely all bonds of agents appointed to disburse public money.

Shall furnish fuel, lights, stationery, etc., for the General Assembly.

5. He shall provide all fuel, lights, servants, or other contingents necessary for the General Assembly; also, all stationery for their use, and shall report the amount of the same to the Finance Committee of the House of Representatives before the adjournment of the session. He shall perform all other duties required of him by law, or which necessarily attach to his office.

Great Seal to be kept in his office.

§ 81. The Great Seal of the State, adopted February 8th, 1799, and now on deposit in the office of Secretary of State, is as follows:

Description of Seal.

1. It is of silver, and the size of two-and-a-quarter inches in diameter.

2. The device on one side is a view of the sea shore, with a ship bearing the flag of the United States riding at anchor near a wharf, receiving on board hogsheads of tobacco and bales of cotton, emblematic of the exports of this State; at a small distance a boat, landing from the interior of the State, with hogsheads, etc., on board, representing her internal traffic; in the back part of the same side a man in the act of plowing, and at a small distance a flock of sheep in different pastures, shaded by a flourishing tree; the motto thereon, Agriculture and Commerce, 1799.

3. The device on the other side is three pillars supporting an arch, with the word Constitution engraven within the same, emblematic of the Constitution, supported by the three Departments of Government—viz., the Legislative, Judicial, and Executive—the first pillar having engraven on it “Wisdom,” the second “Justice,” the third “Moderation;” on the right of the last

Article 1.—The Secretary of State.

pillar a man standing with a drawn sword, representing the aid of the military in the defense of the Constitution; the motto, State of Georgia, 1799.

§ 82. The Secretary of State shall also discharge the following duties heretofore devolving on the Surveyor General—to wit :

1. To keep safely all the records of plats of land granted, and to report the condition of such records to the Governor at least once a year. Record of plats.

2. To record all plats of land legally authenticated and returned to him by the several County Surveyors, or other surveyors acting by authority, for which grants are sought, and to attach the originals thereof to the grants. To record plats.

3. To keep in his office correct maps of all the different surveys (made by State authority) and of those comprising the land lotteries, their divisions into numbers, districts, sections, and the like, having for every district a separate map. Shall keep maps of surveys.

4. To keep a register of the various grantees thereto, and the dates of the grants. Shall keep a register of grantees.

5. To keep correct maps of all surveys of rivers, harbors, swamps, or land, made by the special direction of the General Assembly. Must keep maps of surveys of all rivers, etc.

6. He shall, when necessary, contract for the execution of new maps, or the re-execution of, or repairs of, old maps, subject to the ratification of the General Assembly. May have new maps made, and old ones repaired.

7. He must certify under his official seal, as the Comptroller General is directed in Section 100. Must give copies of papers.

§ 83. He shall not, directly or indirectly, be interested or engaged in the purchase and sale of wild lands on speculation, on pain of removal by the Governor or the General Assembly. Shall not speculate in wild lands.

ARTICLE II.

THE STATE TREASURER.

SECTION.

- 84. Treasurer's bond.
- 85. His rights and duties.
- 86. His duties specified.
- 87. His office subject to inspection.

SECTION.

- 88. Must settle with successor—when.
- 89. How dealt with on failure to settle.
- 90. He shall keep a book of State bonds.
- 91. May have a clerk—salary.

§ 84. The State Treasurer must give a bond, conditioned the same as that of the Secretary of State, for the sum of two hun- Treasurer must give bond.

Article 2.—The State Treasurer.

dred thousand dollars, and subject to the same rules and regulations.

§ 85. His rights and duties are the same as those of the Secretary of State, set forth in Sections 77 and 78, except the use of the Great Seal. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him and paid into the State Treasury.

His rights and duties same as the Secretary of State.

§ 86. It is moreover the duty of the State Treasurer—

Public funds — how kept and disbursed.

1. To receive and keep safely all the money which shall be paid to him in behalf of the State, [giving certificates therefor, which certificates shall specially set forth the amount, on what account, and by whom paid, and shall be lodged as vouchers in the Comptroller's office,] (a) and to pay out the same, only upon the warrants of the Governor, when countersigned by the Comptroller General, excepting the drafts of the President of the Senate and Speaker of the House of Representatives, for the sums due to the members and officers of their respective bodies.

Shall keep a book of warrants drawn on him.

2. To keep in his office a book, in which shall be entered all warrants drawn on him by the Executive, stating in whose favor drawn, the date, the amount thereof, and to what fund charged, and to retain and file away carefully all such warrants.

His duty as to an account of taxes.

3. To keep annually an account of all taxes that may be due and unpaid by the several chartered banks, and to enforce the collection thereof, agreeable to the laws in force; also to keep an account of all taxes paid into the Treasury annually by the Tax Collectors of the several Counties. An abstract of these accounts must be laid before the Governor.

Must submit estimate of probable receipts and expenditure.

4. And preceding each annual session, he must submit to the Governor detailed estimates of the probable receipts and expenditures, for the next fiscal year, stating the sources of income and the probable amounts to be received therefrom; also the objects of appropriation and the probable necessities of the Treasury.

Must pay pledged or appropriated funds to proper objects.

5. To pay all funds pledged to the payment of the public debt or interest thereon, or to any object of education, and to these objects only, and in nowise to any other purpose; all payments from the Treasury shall be paid from the fund appropriated for such purpose, and not from any other.

Must make quarterly reports to the Governor.

6. At the end of every quarter of the year to make a written report, on oath, to the Governor, of the several amounts received by him during the three months preceding such report.

Article 2.—The State Treasurer.

7. To keep safely the scrip for bank stock, the State bonds, and other evidences of the Educational Fund, and manage and control the same for the purposes to which they are pledged. He may, under the direction of the Governor, deposit all funds set apart for the purpose of Education, or any other purpose not required for immediate use, in any chartered bank of this State, subject to his draft as Treasurer, and with the Governor make such contract with said bank for the use of such funds as may be beneficial to the State.

Shall keep scrip for bank stock, etc.

Under the Governor's direction, he may deposit funds in bank.

8. He shall not, under any circumstances, use himself, or allow others to use, the funds of the State in his hands; and for every violation of this section, he is liable to the State for the sum of five hundred dollars as a penalty, or a forfeiture of salary, if said forfeiture will pay the penalty incurred.

Shall not use the funds of the State.

Penalty.

9. He is authorized to pay all officers of the State whose salaries are fixed by law seventy-five per cent. of the amount for which service has actually been rendered at the date of said payment, taking receipts for the same, which shall be his vouchers and offsets to Executive warrants for said salary; and may also pay members of the General Assembly in the same way, when their accounts are duly audited, unless prevented by the resolution of either or both branches of the General Assembly.

He may pay 75 per cent. of salaries, etc., without warrants.

10. He shall annually report to the Governor the amount of the State debt bearing interest for each year, distinguishing between the sterling bonds, if any, and federal; the rate per cent. paid upon each kind of bonds; the amount upon each rate paid; also the exchange, if any, and the aggregate amount of interest paid in each year, and the amount due and unpaid at each semi-annual payment, and the reasons for such non-payment.

Shall report amount and state of the public debt.

11. When he pays the interest or principal of the State debt upon a warrant issued in his favor, he shall deposit in the Executive Office coupons, or bonds, on which the payments are made, there to be marked "Paid" and filed away, subject to the order of the General Assembly.

Must deposit in the Executive Office coupons or bonds.

12. He shall not pay any appropriation due and not called for within six months after the expiration of the political year for which it is appropriated, but it reverts to the general fund in the Treasury.

Shall not pay appropriations not called for within a given time.

13. All reports required to be made to the Governor by the Treasurer shall be made annually, on or before the 15th of Octo-

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Article 2.—The State Treasurer.

ber, and shall be filed in his office, and by him laid before the General Assembly in connection with his first annual message thereafter.

All reports made to the Governor to be filed.

§ 87. The Governor may exercise a general superintendence over the office of State Treasurer not inconsistent with the provisions prescribed for it by law, and may, at any time, appoint some competent person to examine into the state of such office, for any period of time he may designate, and report its condition to him, and shall have power to require of such Treasurer to withdraw the public funds from any place of deposit deemed unsafe by him.

Governor may order deposit to be withdrawn.

Treasurer resigning must settle with his successor in ten days.

Comptroller must record settlement and receipt in his office.

§ 88. If the Treasurer resign, or is removed, he must, within ten days thereafter, state his accounts and deliver the books, papers, and money of the Treasury to his successor, taking his receipt therefor, and the Comptroller must record a statement of such settlement and receipt in his office, and report the same forthwith to the Governor.

How Treasurer is dealt with when he is in default.

§ 89. If the Treasurer fail to comply with the provisions of the preceding section, or if he dies, absconds, or absents himself without sufficient cause for as long as thirty days, the Comptroller, after giving ten days' notice, by publication in some public gazette at the seat of Government, must proceed, and in the presence of any person who may appear in behalf of the late State Treasurer, to state his account and deliver the books, papers, money, and all other appurtenances of the office, to his successor, taking his receipt therefor, and record and file such statement and receipt in his office, and report forthwith to the Governor.

Shall keep a book of State bonds, and their payment.

§ 90. The Treasurer shall keep a book in which he shall record a description of all the bonds heretofore or hereafter issued by this State, and in said book shall note all bonds paid, and the date of payment, and all coupons paid on each, and the date of their payment.

May appoint and remove clerk.

Salary.

§ 91. [The Treasurer is authorized to employ a suitable person as clerk to assist him in the duties of his office, and to remove him at his pleasure; and such clerk shall receive a salary of sixteen hundred dollars per annum.] (a)

(a) Acts of 1863-4, page 77; Acts of 1865-6, page 250.

Article 3.—The Comptroller General.

ARTICLE III.

OF THE COMPTROLLER GENERAL.

SECTION.

92. Comptroller's bond.
93. His rights and duties.
94. His duties specified.
95. Annual report to the Governor.
96. His authority.
97. Improvements in revenue laws.
98. Book of appropriations and warrants.

SECTION.

99. Bonds of Tax Collector and Receiver.
100. Must give copies of office papers.
101. Delivery of office to successor.
102. Additional fees.
103. Additional duties.
104. Shall not speculate in wild lands.
105. May have clerk—salary.

§ 92. The Comptroller General must give a bond, conditioned the same as that of the Secretary of State, for the sum of twenty thousand dollars, subject to the same rules and regulations. Bond of Comptroller General.

§ 93. His rights and duties are the same as those of the Secretary of State, set forth in Sections 77 and 78, except the use of the Great Seal. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him and paid into the State Treasury. His rights and duties.

§ 94. It is moreover the duty of the Comptroller General—

1. To keep an account showing the several appropriations authorized by law, the time when the same are drawn from the Treasury, in whose favor, and to what fund charged. Shall keep an account of appropriations.

2. To [examine, check, and] (a) countersign all warrants upon the Treasury drawn by the Governor, [President, and Speaker, and charge the amount thereof to the funds on which they may be respectively drawn, previous to their being presented to the Treasurer for payment.] (b) Countersign warrants.

3. To audit all accounts against the State, and allow or reject the same before they are submitted to the Governor. Must audit accounts *vs.* the State.

4. To examine all the digests of tax returns forwarded to his office by the several Receivers, and note and correct all mistakes therein, and notify the Collector of such corrections. Must examine and rectify tax digest.

5. [To settle with the several Tax Collectors and all other persons indebted to the State, and in all cases where payments may be made at the Treasury to give receipts for the same, founded on the Treasurer's certificates.] (c) Must settle with tax collectors, and others.

6. To collect all amounts due from defaulting Collectors of Taxes, and issue execution therefor, against them and their securities. Collect what is due from defaulting Tax Collectors.

(a) Acts of 1861, page 81, and Cobb's Digest, pages 1022–23. (b) Acts of 1861, page 81, and Cobb's Digest, pages 1022–23. (c) Acts of 1861, page 81, and Cobb's Digest, pages 1022–23.

Article 3.—The Comptroller General.

7. To see that no draft or warrant be countersigned by him, to be paid out of any appropriated fund, after the same has been exhausted; and in such case, or in any case of illegal payments from the Treasury upon warrants countersigned by the Comptroller, he, as well as the Treasurer, with all their securities, are jointly and severally liable upon their several bonds for the repayment of such amounts, with all expenses of prosecution, to the State.

8. To issue his draft, payable to the Treasurer, for the amounts of all dividends or taxes due by chartered banks in this State, or by the agencies of foreign banks, and on failure to pay the same, to issue execution therefor.

9. To receive and keep safely and collect all evidences of debt due to the State from any other source than taxes, and pay over the same to the Treasurer as soon as received.

10. To notify the Attorney and Solicitors General, or any other Attorney, in his discretion, of all executions against defaulting Tax Collectors, and require of them annually a report of the state or condition of such executions prior to the session of each General Assembly.

11. To keep a book in which to enter all bonds taken since the third day of March, 1856, and to file the originals in his office.

12. To have made suitable indexes to the record books in his office.

13. To audit the accounts of all agents disbursing public money.

§ 95. To make a report annually to the Governor, showing—

1. An account current, from his books, between the Treasurer and the State of all receipts and payments, including amounts paid on the drafts of the President and Speaker, as reported to him by the Treasurer.

2. A statement of the taxes paid to the State by each of the Counties, as appears by the digest thereof, and the Counties whose Collectors are in default, and the amount of such default.

3. A statement of all evidences of debt due the State and uncollected, which may remain in his office, the condition of the same, the name of the Solicitor or Attorney having it in charge, and his report of it.

4. A statement of the Educational Fund of the State, its annual income, the amounts paid out, when, and to whom.

Comptroller and Treasurer liable for all moneys paid improperly.

Shall issue draft for taxes due from banks; if not paid, issue execution.

He shall receive all moneys due and pay to Treasurer.

He may require report from Attorneys and Solicitors General.

Keep book of bonds since 1856, and file originals.

Shall cause books to be indexed.

Must audit accounts.

Shall annually report to the Governor.

Taxes paid by each County.

Debts due to the State.

Education- al Fund.

Article 3.—The Comptroller General.

5. A statement of the condition of the public debt of the State, the amount of interest paid, and the fund from which paid. Public debt.

6. A statement of the accounts of all officers and agents disbursing public money, and the names of such as have failed to comply with the laws relating to their offices and appointments, and the several sums for which they are in default. Accounts of money agents.

7. The salaries and pay of all officers of the State. Salaries and pay of officers.

8. The incidental expenses of the General Assembly, Executive and Judicial Departments. Incidental expenses.

9. All sums paid or due to individuals by special contract. Sums paid on contracts.

§ 96. He has authority—

1. To settle up the business of the office for previous years. To settle old business.

2. To allow Receivers and Collectors of Taxes their commissions, and to balance the tax books and other books of the office upon satisfactory proof of payment or settlement. Also, to allow commissions to Tax Collectors.

3. To collect all unpaid taxes of previous years. Collect unpaid taxes.

§ 97. In his annual report the Comptroller General shall suggest such improvements in the Revenue Laws as his experience and observation may approve. His report must be made at the time the Treasurer's is, and likewise communicated to the General Assembly. He may suggest improvements in Revenue Laws.

§ 98. He must keep in his office a well bound book in which shall be entered, in alphabetical order, the full amount of all annual appropriations, setting forth the amounts under their several heads; all warrants that he may check and pass, together with the fund on which it is drawn, the time, amount, and in whose favor drawn; and make all entries necessary to a true exhibit of the finances of the State. Must keep books of appropriations and warrants.

§ 99. He must keep a book in which to enter all bonds taken of Tax Collectors and Receivers, and keep the same on file in his office. He shall collect all unpaid taxes of previous years at a compensation of five per centum on the amount collected. Must keep book of Tax Collector and Receiver's bonds.

§ 100. He must certify under his official seal, at all times when necessary for the public use, and on application and payment of his legal fees therefor, for private use, copies of any papers kept in his office. Must give copies of papers.

§ 101. If the Comptroller resigns, or is removed, he must immediately state his account and deliver every thing pertaining to his office to his successor; or if he dies, absconds, or absents himself for as long as thirty days without the Governor's permission, Must settle with successor, and deliver up every thing pertaining to his office.

Article 3.—The Comptroller General.

the Governor may without delay declare the office vacant, supply his place by appointment, examine the condition of his office and deliver over to the appointee.

When office
may be de-
clared vac-
ant.

§ 102. He shall, in addition to his salary, have ten per cent. on all sums he may collect, except for taxes which necessarily was the duty of a predecessor to collect, and which was not done.

Additional
fees.

§ 103. The Comptroller General must make out for the use of the General Assembly—

What his
report must
contain.

1. A table containing the taxable property and other items on the tax digest of each County for the year in which he makes his annual report.

2. A table annually of the polls in each County for the year immediately preceding his report; the number of voters in each County at the general election next preceding his report; the number of children in each County returned for participation in the Educational Fund and the amount drawn by each County from said fund; the amount drawn by each County for pay of members of the General Assembly; the total amount drawn by each County from the Treasury, and the total amount of net tax paid into the Treasury for the year preceding by each County. Also, to furnish such other statistical information connected with his office as may be useful to the General Assembly. The annual reports of said officer and of the Treasurer must contain only the available funds or cash in the Treasury as the balance therein. They are also required to report separately and under the head of "Assets belonging to the State," all bank or railroad stocks or bonds, or other assets; the State Road to be reported without any stipulated value. Such officers are authorized to make such transfers or alterations on their books as are necessary to comply with the preceding section. The items "Darien Bank Bills," Western and Atlantic Railroad script, and uncurrent funds hitherto reported, must be sealed up, remain in the Treasury, and be left out of all future annual reports of said officers.

Shall not
speculate in
wild lands.

§ 104. He shall not, directly or indirectly, be interested or engaged in the purchase and sale of wild lands on speculation, on pain of removal by the Governor or the General Assembly.

May appoint
and remove
clerk.

§ 105. [He is allowed a clerk, to be appointed and removable by him; and such clerk shall receive an annual salary of sixteen hundred dollars.] (a)

(a) Acts of 1862-3, p. 56, and Acts of 1865-6, p. 250.

Article 1.—State Librarian.

CHAPTER IV.

OTHER OFFICERS CONNECTED WITH THE EXECUTIVE DEPARTMENT.

ARTICLE 1.—*State Librarian.*ARTICLE 2.—*Governor's Messenger and State House Guard.*

ARTICLE I.

STATE LIBRARIAN.

SECTION.

- 106. Librarian's bond.
- 107. He must keep the State Library.
- 108. He must preserve the books, etc.
- 109. He shall distribute the laws, etc.
- 110. He must keep a catalogue of books.

SECTION.

- 111. He must take and file receipts, etc.
- 112. He must exchange for reports, etc.
- 113. His office is subject, etc.
- 114. He must deliver contents of office.

§ 106. The Librarian must give a bond in the sum of two thousand dollars, with good security, payable to the Governor and his successors in office, conditioned for the faithful performance of his duty as State Librarian.

Must give
bond.

§ 107. The Library belonging to this State, with such additions as may be hereafter made from any quarter, together with all copies of the Laws, Journals, or other books published or purchased by the State, shall be kept in appropriate apartments at the Capitol building designated by the Governor, under such rules and regulations as he may from time to time prescribe.

Must keep
the Public
Library.

§ 108. It is his business to preserve, keep in order, and protect said Library, to keep the same open for the inspection of all citizens of the State, and to discharge such other duties in connection with the Library as may be required of him by law or the Governor of the State.

Must pre-
serve Libra-
ry for inspec-
tion.

§ 109. The distribution of the Laws and Journals, Reports of the Supreme Court Decisions, Laws of the United States, and all other books required to be distributed to the several Counties (of the State) or to be sent to other States, shall be made by the Librarian, under the direction of the Governor, in pursuance of the provisions of the law in respect thereto.

Shall dis-
tribute Laws
and Journals
and other
books.

§ 110. He shall make out and keep on hand a catalogue of all the books in the Library—to be amended without unnecessary de-

Must keep a
catalogue of
books.

Article 2.—Governor's Messenger and State House Guard.

lay from time to time, as he may obtain new books or dispose of old ones—which shall be printed and kept in his office in two or more conspicuous places.

§ 111. It is his duty to receive from the State Printer the Laws and Journals, and when distribution is made to the various Counties, to take from Clerks of Courts or other distributees their receipts therefor; likewise all other books required to be distributed. He must receive and take receipt on the distribution, and keep in his office a file of such receipts.

§ 112. He must correspond with the proper authorities of other States who publish the reports of their highest appellate tribunal, with a view to exchange theirs for our Supreme Court Reports.

§ 113. His office is under the general supervision of the Governor, who may at any time appoint a competent person to examine into and report its condition to him.

§ 114. If the Librarian resign, or be removed, he must, within ten days thereafter, deliver the books, papers, and other contents of his office to his successor, taking his receipt therefor, which must be filed and recorded in the Executive Office; and if there is any deficiency in the books received by him, or other damage done, the Governor shall have suit brought on his bond.

ARTICLE II.

GOVERNOR'S MESSENGER AND STATE HOUSE GUARD.

SECTION.

115. Governor's Messenger.

116. His duties.

117. Appointment of special Messenger.

SECTION.

118. Capitol guards—their duties.

119. Number may be changed.

§ 115. The Governor may in his discretion, as the exigency may require, appoint a Messenger to the Executive Department, or have that duty performed by some other employee about the State House, engaged by him under the general authority granted to him, and when so performed it must be done without additional compensation.

§ 116. When there is a Messenger, he shall perform such duties for the Executive Office, the other officers in the State House, and such other service connected with the State business at the Capitol as the Governor shall prescribe, and be governed by such rules and regulations as he may adopt.

Article 1.—Eligibility, Qualification, and Commission of Officers and Vacation of Offices.

§ 117. When there is no Messenger, the Governor may, if occasion should require, employ some person to perform any special service, for a reasonable compensation, such as is the duty of the Messenger to perform, but which can not be performed by the person acting as such.

Governor may employ persons for special service.

§ 118. The Governor shall appoint a guard for the Capitol buildings, including the captain of the guard, whom he shall designate as such, whose business it shall be to remain in said buildings from sundown until sunrise of the next day, every night in the year, and on Sundays and holidays, to keep watch over the same and protect them from fire or intruders.

Guard of Capitol, and their duties.

§ 119. The Governor has power to keep the number of said guard full, when lessened by providential or other cause, and adopt such rules and regulations in regard to them, as in his judgment the public service may demand.

Number of guard may be changed.

CHAPTER V.

GENERAL REGULATIONS AS TO ALL OFFICERS AND OFFICES.

ARTICLE 1.—*Of Eligibility, Qualifications, and Commissions.*

ARTICLE 2.—*Official Oaths.*

ARTICLE 3.—*Official Bonds and Herein of Discharging Sureties.*

ARTICLE 4.—*Of Delivery of Books, etc., to Successor.*

ARTICLE I.

OF ELIGIBILITY, QUALIFICATION, AND COMMISSION OF OFFICERS
AND VACATION OF OFFICES.

SECTION.

- 120. Persons ineligible to civil office.
- 121. When ineligible, the next highest.
- 122. Persons elected, failing to qualify.
- 123. Residence, seal, and term of office.
- 124. Commissions under Great Seal.

SECTION.

- 125. Commissions under Executive seal.
- 126. When civil offices are vacated.
- 127. Vacancy in Executive Office.
- 128. Resignations sent to the Governor.

§ 120. The following persons are held and deemed ineligible to hold any civil office in this State, and the existence of either of the following state of facts is a sufficient reason for vacating any office held by such person; but the acts of such person, while holding a commission, are valid as the acts of an officer *de facto*—viz:

Persons ineligible to office.

Article 1.—Eligibility, Qualification, and Commission of Officers and Vacation of Offices.

1. Persons who are not citizens of this State, nor of the age of
 Minors. twenty-one years or upwards.

2. All holders or receivers of public money of this State, or
 Those refus- any County thereof, who have refused when called upon, or failed
 ing to pay over public money. after reasonable opportunity, to account for and pay over the same
 to the proper officer.

3. Any person convicted and sentenced finally for any felony,
 Felons of under the laws of this or any other State, involving moral turpi-
 moral turpi- tude, the offense being also a felony in this, unless restored by a
 tude. pardon from the proper Executive, under the Great Seal of the
 State, to all the rights of citizenship.

4. Persons holding any office of profit or trust under the Gov-
 U.S. officers ernment of the United States (other than that of Postmaster), or
 or officers of either of the several States, or of any foreign State.
 under other States.

5. Persons of unsound mind, and those who, from advanced age
 Persons in- or bodily infirmity, are unfit to discharge the duties of the office
 sane or in- to which they are chosen or appointed.
 firm.

6. Those who have not been inhabitants of the State, County,
 Those whose District, or Circuit for the period required by the Constitution and
 term of res- laws of this State.
 idence is in- complete.

7. All persons from any cause constitutionally disqualified.
 Those other- All officers are eligible to re-election and re-appointment and to
 wise disqual- hold other offices, unless expressly declared to the contrary by the
 ified. Constitution or laws.

§ 121. If at any popular election to fill any office the person
 All officers re-eligible. elected is ineligible under the foregoing rules, the person having
 The person having next highest vote to an ineli-
 gible candi- date is elect-
 ed, if plural- ity elects. the next highest number of votes, who is eligible, whenever a
 plurality elects, shall be declared elected, and be qualified and
 commissioned to such office.

§ 122. Persons who after an election fail to comply with all the
 A person prerequisites of the law in order to obtain commissions or certifi-
 elected, and failing to ob- cates to discharge the duties of the office, are ineligible to re-
 tain com- mission, is ineligible on election at the election held, by reason of such failure, for the same
 account of office.
 the failure.

§ 123. All officers of this State must reside therein at such
 Officers must reside places as are designated by law, and discharge the duties of their
 in the State, and hold of- office until their successors are commissioned and qualified; and
 fice until successor is all officers whose certificate of records or other papers are ad-
 qualified; missible in evidence in any Court in this State must have and
 and must keep a seal keep an official seal.
 —when.

Article 1.—Eligibility, Qualification, and Commission of Officers and Vacation of Offices.

§ 124. The following officers must be commissioned, with the Great Seal of the State annexed thereto, signed by the Governor, and countersigned by the Secretary of State—viz: Senators and Representatives in Congress, Judges of the Supreme and Superior Courts, Attorney and Solicitors General, Reporter of the Supreme Court, Secretary of State, Treasurer, and Comptroller General, and all military officers of the grade of general, either of division or brigade. Those of all Federal and Judicial officers above enumerated must be on parchment.

What officers must be commissioned with the Great Seal of the State.

§ 125. All other civil officers of the State or County shall be commissioned under the seal of the Executive Department, signed by the Governor, and countersigned by one of his Secretaries, except Constables, whose election shall be certified by the Clerk of the Inferior Court of the County; and such certificate shall operate as their commission. All officers of the militia and of volunteer companies, battalions, or regiments, regularly incorporated (of the grade of lieutenant or higher), shall have commissions under the seal of the Executive Department.

What officers to be commissioned under the Seal of Executive Department.

§ 126. All offices in the State are vacated—

Offices are vacated by death.

1. By the death of the incumbent.

By accepted resignation.

2. By resignation, when accepted.

3. By decision of a competent tribunal declaring the office vacant.

By judgment.

4. By voluntary act or misfortune of the incumbent, whereby he is placed in either of the conditions specified of ineligibility to office, which shall operate from the time the fact is ascertained and declared by the proper tribunal.

By voluntary act, or misfortune, rendering incumbent ineligible according to law.

5. By the incumbent ceasing to be a resident of the State, or of the County, Circuit, or District for which he was elected. In the first case the office shall be vacated immediately; in the latter cases, from the time the fact is judicially ascertained.

By a failure of incumbent to reside where the law requires.

6. By failing to apply for and obtain commissions or certificates, or by failing to qualify or give bond, or both, within the time prescribed by the laws and Constitution.

By failure to obtain commission, or qualify.

7. By abandoning the office and ceasing to perform its duties, or either.

By abandonment of the office.

§ 127. The resignation of the Governor must be transmitted by him to the General Assembly, if in session; if not in session, to the Secretary of State, who must on the same day notify the President of the Senate. If the office becomes vacant by death,

How vacancy in the office of Governor must be communicated.

Article 2.—Official Oaths.

or any other cause, when the General Assembly is not in session, the Secretary of State must inform the President of the Senate. In either case the President of the Senate, when informed, shall, within ten days, repair to the Capital and take the oath of office before any Judge of the Supreme or Judge of the Superior Court, and the General Assembly, if in session; which fact shall be entered on the minutes of the Executive Department. If he does not so appear in said time, he shall be considered as having resigned, and the Secretary of State shall then, or in case there is no President of the Senate, inform the Speaker of the House of Representatives, and the proceedings shall be the same.

President of the Senate failing to qualify, the Speaker of the House must be notified.

§ 128. The resignation of Senators and Representatives in Congress, and members of the General Assembly, and of all officers whose commissions issue from the office of Secretary of State or the Executive Department, and whose places may be supplied by Executive appointment, shall be made to the Governor.

What officers must communicate resignation to the Governor.

ARTICLE II.

OFFICIAL OATHS.

SECTION.

- 129. Additional oath of public officers.
- 130. Oath must accompany *dedimus*.
- 131. Who may qualify officers.
- 132. Official oaths must be filed.
- 133. Where to be filed.

SECTION.

- 134. Endorsement of filing.
- 135. Oaths of deputies to be filed.
- 136. Failing to take and file oath.
- 137. When acts are valid without oath.

Additional oath of public officers.

§ 129. All public officers, besides the oath of office and the oath prescribed by the Constitution (if any), shall swear that he is not the holder of any public money due this State unaccounted for; that he is not the holder of any office of trust under the Government of the United States (except Postmaster), nor either of the several States, nor of any foreign State, and is otherwise qualified to hold said office according to the Constitution and laws of Georgia, and will support the Constitution of the United States and of this State; and, if elected by any Circuit or District, that he was a resident thereof for the time required by the Constitution and laws (stating the time).

Form of oath to be sent with *dedimus*.

§ 130. The form of said oath, as well as the oath of office, to be taken and subscribed, must be forwarded with the *dedimus potes-*

Article 2.—Official Oaths.

tatem, and be taken and subscribed at the time of receiving the commissions before the officer to whom the same is directed, and in conformity to the directions.

§ 131. When not otherwise provided by law, and not directed in the *dedimus potestatem*, the oaths of office may be taken before any officer authorized by law to administer an oath. Such oaths must be written out and subscribed by the person taking them, and accompanied by the certificate of such officer specifying the day and year when taken. Who may qualify officers.

§ 132. Such oaths, when taken by an officer whose general duties are not confined to any one County (unless otherwise specially provided), must be filed with the certificate required by the preceding Section in the Executive Office; and when taken by an officer whose duties are confined to one County, as provided in the next Section. Where official oaths must be filed

§ 133. When taken by the Justices of the Inferior Court, the Ordinaries and the Clerks of the Superior Courts, they must be filed in the office of the Clerk of the Inferior Court, and also entered on the minutes of their respective Courts. When taken by Sheriffs, they must be likewise filed in the office of the Inferior Courts, and must be entered on the minutes of the Superior Courts; and when taken by Coroners, Tax Collectors, or Receivers, County Treasurer, Justices of the Peace, or Constables, or any other County officer, they must be filed in the office of the Clerk of the Inferior Courts; and the Clerks of the Inferior Courts, and also of the Superior Courts, when one and the same officer, must file their oaths in the office of the Ordinary, and enter them on the minutes of their own Courts respectively. Where official oaths must be filed

§ 134. The officer in whose office such oaths are filed must endorse thereon the day and year of filing. Endorsement of—when filed.

§ 135. All deputies, before proceeding to act, must take the same oaths as their principals take, which must be filed in and entered on the minutes of the same office, and with the same endorsement thereon, but these provisions do not apply to any deputy who may be employed in particular cases only. Oaths of deputies and where to be filed.

§ 136. If any officer or deputy, required by law to take and file such oaths, enters upon the duties of his office without first taking and filing the same in the proper office, he is guilty of a misdemeanor, and, on conviction, must be fined not less than two hundred dollars. Penalty for a failure to take and file official oath.

Article 3.—Official Bonds and Herein of Discharging Sureties, etc.

Acts of officers valid without the oath, unless otherwise declared.

§ 137. The official acts of an officer are not the less valid for his omission to take and file the oath, unless in cases where so specially declared.

ARTICLE III.

OFFICIAL BONDS AND HEREIN OF DISCHARGING SURETIES AND REQUIRING ADDITIONAL SURETIES.

SECTION.

138. The payee and condition, of bonds.
139. Bonds must accompany *dedimus*.
140. Approval of official bonds.
141. Number and qualification of sureties.
142. May be signed by Attorney in fact.
143. When bonds must be filed.
144. Certificate of failure to file bond.
145. Acting before filing bond.
146. Endorsement of filing.
147. Notice of failure to file bond.
148. Penalty for failure.
149. Obligations of official bonds.

SECTION.

150. Approval, filing and record of bonds.
151. Giving bonds to be certified.
152. Deputies' bonds.
153. Principal or deputy may be sued.
154. Bond when discharged.
155. Officers liable above penalty of bond.
156. Validity of bonds.
157. Damages in suits on bonds.
158. Future official oaths and bonds.
159. How sureties may be discharged.
160. Officer failing to give new bond.

Official bonds — to whom payable and upon what conditions.

§ 138. The bonds of all public officers required by law to give bond, unless otherwise provided, must be made payable to the Governor of the State of Georgia and his successor in office, with such sureties as the approving Court or officer is satisfied is sufficient, and conditioned in all cases in which a different condition is not prescribed, faithfully to discharge the duties of such office during the time he continues therein or discharges any of the duties thereof.

Official bonds must be sent with *dedimus potestatem*.

§ 139. Official bonds of all officers who are entitled to commissions from the Governor, and who are required to give bonds, must be prepared and furnished by the Executive Department at the time of forwarding the *dedimus potestatem*.

Approval of bonds.

§ 140. The approval of all official bonds shall be in writing, endorsed on the bond, and should show the day and year on which the same were approved, and shall not be filed until thus approved.

Number and qualification of sureties on official bonds.

§ 141. Such bonds shall not be approved by the approving officers unless they have at least two good and solvent sureties, and not more than [ten,] (a) all of whom must be permanent residents of the State, and two also of the County, and freeholders thereof. When said approving officers do not of their own knowledge

(a) Acts of 1863-4, p. 124.

Article 3.—Official Bonds and Herein of Discharging Sureties, etc.

know that a surety is worth enough to enable them to accept him, they shall not take him unless he swears to his means, and it is satisfactory, of which swearing they shall make a minute on the bond.

§ 142. When an official bond is signed by an Attorney in fact, the power of attorney must be attested by a Justice of the Inferior Court, and filed and recorded as the bond is. Power of attorney attested and filed.

§ 143. The official bonds of public officers required by law to be filed in the office of Comptroller, Secretary of State, or Executive Department, must be filed therein within forty days after the election or appointment of such officer; when in the office of the Clerk of the Superior or Inferior Courts, or Ordinary, within thirty days therefrom; in all other cases within twenty days therefrom. [*Provided*, that Sheriffs, Clerks of the Superior and Inferior Courts, Ordinaries, Tax Collectors, Coroners, and County Surveyors of this State shall be allowed until the first day of June in each year, and the Tax Receivers until the first day of April next (after their election), to take up their commissions from the Inferior Courts and to perfect their bonds.] (a) Within what time official bonds must be filed

§ 144. When any officer of whom bond is required fails to make and file the same as prescribed in the preceding section, it is the duty of the Court, or officer in whose office it is required to be filed, at once to certify such failure to the appointing power, and to the power whose duty it may be to order an election. Certificate of failure to file official bond.

§ 145. If any public officer required by law to give bond performs any official act before his bond is approved and filed as required, he is guilty of a misdemeanor, and on conviction must be fined not less than five hundred dollars. Acting before filing bond a misdemeanor.

§ 146. Every officer in whose office the official bond of any public officer is filed must endorse on such bond the day and year when the same was filed, and sign his name to such endorsement. Endorsement on official bonds.

§ 147. If any public officer required by law to give bond fails to file the same, within the time hereinbefore prescribed, in the proper office, notice of such failure must be given by the officer in whose office such bond is required to be filed by or during the two first days of the session of the Superior Court held in the County in which the officer so failing resides, next after such failure, to the Attorney or Solicitor General of the Circuit. Notice to be given of a failure to file official bond.

§ 148. Any officer whose duty it is to mark-file the bond and to give the several notices required in this article, and failing to do

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Penalty for a failure to mark-file, or notify of the failure to file the bond.

so, without good and sufficient excuse therefor, shall, on information rendered and citation to appear before the Superior Court of the County of his residence, be fined as for a contempt (in the discretion of the Court.)

Official bonds are obligatory.

§ 149. Every official bond executed under this Code is obligatory on the principal and sureties thereon—

For breach by the officer.

1. For any breach of the condition during the time the officer continues in office or discharges any of the duties thereof.

Breach by a deputy.

2. For any breach of the condition by a deputy, although not expressed, unless otherwise declared by law.

Discharge of duties imposed by law subsequent to its execution.

3. For the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein.

For the use of any one injured.

4. For the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office as by his failure to perform, or by the improper or neglectful performance of, those duties imposed by law.

How official bonds are to be approved, filed and recorded.

§ 150. The official bonds of the Ordinaries, the Clerks of the Superior Courts, of Sheriffs, Coroners, County Surveyors, County Treasurers, Tax Collectors and Receivers, given for County taxes, must be approved by at least three Justices of the Inferior Courts, filed in the office of the Clerks of the Inferior Courts, and by them recorded; that of the Clerks of the Inferior Court must be filed in the Ordinary's office, and by them recorded, and when the Clerks of the Inferior Courts are also Clerks of the Superior Courts, those of the Clerks of the Superior Courts must likewise be filed and recorded in the Ordinary's office. The bonds of Tax Collectors and Receivers for State taxes, after being likewise approved, must be recorded by the Clerks of the Inferior Courts, and the original bond must be by them transmitted to the Governor (for deposit in the Comptroller General's office).

Justices of the Inferior Court must certify to the Governor that certain officers have given bonds.

§ 151. Such Justices of the Inferior Court must sign a certificate to the Governor, stating that the Clerks of the Superior and Inferior Courts respectively, the Sheriffs, Coroners, and County Surveyors, have taken the oaths and given the bonds sent from the Executive Departments, together with a statement of the dates, amounts, and names of the sureties of each, and that they have delivered to them their commissions; which shall be attested by the Clerks of said Courts, and by them immediately transmitted to the Governor.

Article 3.—Official Bonds and Herein of Discharging Sureties, etc.

§ 152. When deputies give a bond they must be payable to their principals, with surety conditioned as theirs are, for their conduct as deputies, for the same amounts, and must be recorded in the same office and in the same manner as the bonds of the principals.

Deputies' bonds—to whom payable, for what amount, and where filed and recorded.

§ 153. It shall be at the option of any person who claims damages of any principal officer for the act of his deputy to sue said deputy's bond instead of his, in the same manner as the principal's bond may be sued.

Principal's or deputy's bonds may be sued for act of Deputy.

§ 154. Such bonds are not discharged by a single recovery, but proceedings may be had from time to time, until the whole penalty is exhausted against the officer and his sureties, or either, and said bonds are joint or several, whether so set forth or not.

One recovery does not discharge the bond, unless to the full penalty.

§ 155. When the penalty is exhausted, the officer himself shall still be liable, and upon the same measure of damages as upon his bond, and he is likewise liable for any damage he may do in undertaking to discharge the duties of an office without having given the necessary bond, or, having given one, it is invalid, in whole or in part.

Officer liable though penalty is exhausted.

§ 156. Whenever any officer required by law to give an official bond acts under a bond which is not in the penalty payable and conditioned nor approved and filed as prescribed by law, such bond is not void, but stands in the place of the official bond, subject on its condition being broken to all the remedies, including the several recoveries which the persons aggrieved might have maintained on the official bond.

Bonds valid, though not in conformity to law.

§ 157. The measure of damages upon all official bonds for the misconduct of the officer, unless otherwise specially enacted, shall be the amount of injury actually sustained, including the reasonable expenses of the suit to the plaintiff, besides the costs of Court; but in all cases when little or no damage is actually sustained and the officer has not acted in good faith, the jury may find for the plaintiff an amount as smart money, which, taking all the circumstances together, shall not be excessive nor oppressive.

Measure of damages in suits on bonds.

§ 158. All the provisions of this and the preceding Article apply to the oaths of office and official bonds of all public officers of this State whose office may be established hereafter, unless the contrary is expressly provided.

Provisions of this and preceding article apply to official oaths.

§ 159. When the surety to any bond, given by any officer for the performance of any public duty, shall give notice, in writing, to the Governor of his desire to be relieved from future liability, for

How sureties on official bonds may be discharged.

Article 4.—Delivery of Books to Successors.

good cause therein stated and sworn to—of which the Governor shall be the judge—or any such surety shall in the opinion of the Governor, formed upon satisfactory evidence, become insufficient, it shall be his duty to require of such officer a new bond and surety.

Officer failing to give new bond when required, to be removed from office.

§ 160. If any officer shall fail to comply with such requisition within ten days from the date he is served personally with a copy of the Executive order containing such requisition, he is by such failure removed from office and a vacancy declared.

ARTICLE IV.

OF DELIVERY OF BOOKS TO SUCCESSORS.

SECTION.

- 161. Outgoing officer must deliver books.
- 162. Persons having office property.
- 163. Persons refusing to deliver, etc.

SECTION.

- 164. May be imprisoned.
- 165. Books, etc., delivered to successor.
- 166. Penalty for failure.

Officer must deliver all books, etc., to successor.

§ 161. When any office is vacated it is the duty of the incumbent, on demand made, to deliver all books, papers, and other property appertaining to the office to his qualified successor.

Other persons having office property must deliver it up.

§ 162. If a vacancy occurs by death, or the incumbent is not to be found at the time of demand made, it is the duty of any person having possession or control of such office property, or any part thereof, to deliver it up, and the rights and remedies are the same against such person as against the deceased officer, if living or to be found.

How person in possession, refusing to deliver office and contents, to be proceeded against.

§ 163. If any person neglects or refuses so to do after demand made, the successor shall make complaint to the Justices of the Inferior Court of the County, or to the Judge of the Superior Court of the Circuit in which the person refusing resides, or if neither can be had, the Judge of the Superior Court of an adjoining Circuit, and if such officer is satisfied, from the oath of complainant or otherwise, that such are withheld, he must grant an order requiring the person so refusing to show cause before him, on a day and at a place named in such order, why he should not be compelled to deliver over the same.

If such persons show no good cause, and fail to comply with an order to deliver, they shall be imprisoned.

§ 164. At the time so appointed, or at any other time to which the matter may be adjourned, a copy of such order having been personally served on the person so refusing, such officer must proceed to inquire into the circumstances, and if it appears that such books and papers are withheld, he must order the same delivered up instantly to said successor, and on failing to comply

Article 4.—Delivery of Books to Successors.

with such order he shall issue a warrant directed to any officer of said County, or of the adjoining County, authorized to make the arrest, to arrest said officer, and commit him to jail, there to remain until he complies with said order or is otherwise discharged by course of law. At the same time, in the same way, he shall command said officer to search such places for them as may be designated in such warrant, and to seize and bring them before him or some other officer authorized to preside, and being so brought and appearing to belong to said office, he shall cause them to be delivered to the successor. The payment of costs are in the discretion of the Court. Said proceedings do not interfere with the provisions in the Penal Code on this subject.

Search may be made for papers under a warrant.

§ 165. All judicial or ministerial officers or State's Attorneys, who by law are entitled to receive from the State any books, pamphlets, or other documents, upon retiring from office must deliver them over to their successors, and from one successor to another.

Officers must deliver books to successors.

§ 166. On failure to deliver such books, after demand made by incoming officer, he is liable for three times the first cost thereof, to be retained out of his salary, if a salaried officer, and if not a salaried officer, or, being one, it is omitted to be retained, the officer so detaining is subject to suit and recovery (in a Court having jurisdiction) by the successor in the name of the State for his use.

Penalty for failure to deliver books to successor.

TITLE IV.

LEGISLATIVE DEPARTMENT.

CHAPTER I.

OF THE GENERAL ASSEMBLY.

SECTION.

- 167. Meeting of Legislature.
- 168. Length of sessions.
- 169. How organized.
- 170. Oath of members.
- 171. President and Speaker.
- 172. Elections by General Assembly.
- 173. Door-keepers and Messengers.
- 174. Special Messengers.

SECTION.

- 175. Joint Finance Committee.
- 176. Duty of Secretary and Clerk.
- 177. Engrossed copies of laws.
- 178. Pay of President, Speaker, etc.
- 179. Pay of sick members.
- 180. Amount due deceased members.
- 181. Accounts of officers and members.

§ 167. The regular sessions of the General Assembly begin on

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When Legislature meets. the first [Thursday] (a) in November, annually, at [10 o'clock in the forenoon] (b) in the Capitol.

Length of sessions. § 168. Each session shall not continue longer than forty days, unless otherwise ordered by a vote of two-thirds of each branch of the General Assembly.

General Assembly—how organized. § 169. Each branch shall be organized by the Clerk and Secretary thereof respectively, who are, ex-officio, presiding officers until such are elected. No question shall be entertained by them but one relating to the organization, and in deciding such questions they are to be governed, as far as practicable, by the standing rules of the House over which they preside. In the absence of such officer their assistants may officiate. In the absence of both, the body may appoint a chairman whose powers and duties are the same.

Who may administer oath to members. § 170. The oaths of office may be administered to the members of the General Assembly by any Judge of the Supreme or Superior Courts, to be procured by the person organizing each branch.

Election of President of Senate and Speaker of House. § 171. The President of the Senate and Speaker of the House are elected by their respective bodies *viva voce*, and a majority of votes is necessary to a choice. In like manner the Senate must elect a President *pro tem.*, and the House a Speaker *pro tem.*, whose powers and duties, while presiding, or in the absence of said officers, are the same.

Elections—how conducted. § 172. All elections by the General Assembly are to be conducted as follows:

Assemble in the Representative Hall. 1. On the day and hour appointed for the election, the members of both Houses must assemble in the Representative Hall.

Members called and vote by ballot. 2. The names of the members of each House are to be called by their respective Clerks, each member voting *viva voce* as soon after his name is called as practicable.

Result—how ascertained and announced. 3. The result must be ascertained by the President of the Senate and the Speaker of the House, and announced by the first named officer.

One election at time, majority necessary. 4. The votes are to be given for but one election at the same time, and a majority of the whole number of votes cast is necessary to a choice, and all blanks are to be counted as votes.

5. When both branches of the General Assembly agree by resolution to bring on an election at a specified time in the Rep-

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representative Chamber, said resolution can only be rescinded by a vote of two-thirds of either House, and without such vote the election held according to such resolution is valid.

Resolution to bring on election may be rescinded

6. When both branches meet for such purposes, and there is a necessity for an adjournment without having concluded the elections for which they convened, they shall adjourn to some named hour on the same or next day (not counting Sunday or a public holiday), or to a day certain, and the elections made at such time are valid, unless the resolution for the election is in the meantime repealed by said two-thirds vote.

Adjournment pending an election.

§ 173. Each House is entitled to a Door-keeper and Messenger, to perform such duties as may be required of them, who shall be [elected as provided for the election of Clerk and Secretary,] (a) and who shall receive the same pay as the members of the General Assembly.

Election of Door-keeper and Messenger — their pay.

§ 174. When it shall be necessary to carry into effect the 4th Section of the 2d Article of the Constitution, or for any like purpose, either of said officers may appoint any person to execute the orders of each House and the warrant of the presiding officer, who may receive for the service such compensation as the General Assembly may appropriate.

Persons may be appointed for special service.

Their compensation.

§ 175. It is part of the duty of the Joint Standing Committee of Finance to examine the accounts and vouchers of the Comptroller and Treasurer as to all moneys received into and paid out of the Treasury during the last fiscal year, to compare the warrants drawn during that period with the several laws by authority of which they purport to be drawn, to examine into the other accounts and books of such officers, and to count the money on hand at the time of the examination, and to examine the annual reports made by said officers, to see if they are sustained by the true condition of their offices, and report the result to each branch of the General Assembly.

Duty of Joint Finance Committee.

§ 176. At the close of each session the Secretary of the Senate, Clerk of the House of Representatives, and Secretary of State, must select all the papers belonging to the General Assembly, except such as relate to the unfinished and rejected business, and deposit them in the office of the Secretary of State.

Duty of Secretary of the Senate and Clerk of the House at the close of each session.

§ 177. The engrossed copies of all laws and joint resolutions passed by the General Assembly must be preserved by the Chair-

Engrossed copies of laws, etc.—where deposited.

Chapter 2.—Subordinate Officers of the General Assembly.

man of the Enrolling Committee, and deposited in the office of the Secretary of State.

§ 178. The President of the Senate and Speaker of the House receive [twelve] (a) dollars, and the other members [nine] (a) dollars, for each day's attendance, and all are allowed five dollars for every twenty miles of travel going to and returning from the seat of Government, the distance to be computed by [nearest] (a) route usually traveled.

§ 179. If any member is detained by sickness, after leaving home, in coming to, or is unable to attend the House after he arrives at the seat of Government, he is entitled to the same daily pay as an attending member; but no member shall receive pay for absent time unless on account of sickness of himself or family, or by express leave of the House of which he is a member.

§ 180. If any member of the General Assembly shall die during the session, or afterwards, without having received the whole or any portion of his pay, the amount due for the whole session shall be paid to the widow of the deceased, and if no widow, in like manner to the children.

§ 181. The compensation due to the officers and members of the General Assembly must be certified by the President and Speaker, respectively, upon the report of the Auditing Committee to the Treasurer, who afterwards shall pay each member who presents his account duly audited.

CHAPTER II.

SUBORDINATE OFFICERS OF THE GENERAL ASSEMBLY.

SECTION.

- 182. Election of Secretary and Clerk.
- 183. Oath of Secretary and Clerk.
- 184. Administering the oath.
- 185. Compensation of Secretary and Clerk
- 186. Assistants of Secretary and Clerk.

SECTION.

- 187. Qualification of subordinate Clerks.
- 188. Secretary and Clerk must file papers.
- 189. Receive no pay till files are made.
- 190. When both Houses meet, Secretary to aid.

Election and official term of Sec'y of Senate and Clerk of the House.

§ 182. There shall be a Secretary of the Senate and a Clerk of the House of Representatives, elected by the members of each House respectively, *viva voce*, and a majority of votes cast is ne-

Chapter 2.—Subordinate Officers of the General Assembly.

cessary to elect. Their term of office shall be the time for which the members of the General Assembly are elected.

§ 183. Said officers, their assistants, and Engrossing and Enrolling Clerks, before entering on the discharge of their duties, shall take an oath before their respective presiding officers to discharge their duties faithfully and to the best of their skill and knowledge, of which a minute shall be made and entered on the Journals.

Oath of Secretary and Clerk and their assistants.

§ 184. The President of the Senate and Speaker of the House are to administer the oaths required to the subordinate officers of their respective Houses.

President and Speaker may administer oaths to subordinates

§ 185. The *per diem* pay of the Secretary of the Senate and the Clerk of the House, their assistants and all subordinates, shall be determined by each General Assembly in perfecting the Appropriation Bill.

Pay of Secretary and Clerk—how fixed.

§ 186. Said Secretary and Clerk shall have power to appoint their assistants and subordinate clerks as follows—viz :

Secretary and Clerk may appoint

1. The Secretary of the Senate may appoint, at the commencement of the session for which he is elected, one Reader or Assistant Clerk at the desk, one Journalizing Clerk, and one for Enrolling and one Engrossing Clerk, and one Recording Clerk.

Readers, Journalizing and Enrolling, and Engrossing and Recording Clerks.

2. The Clerk of the House may appoint, at the same time, one Reader or Assistant Clerk at the desk, one Journalizing Clerk, two Enrolling and two Engrossing Clerks, and one Recording Clerk.

3. If, at any time during the session, the business requires the appointment of additional clerks, either of said officers may apply to their respective Houses for leave to appoint them; and if they are deemed necessary by the Enrolling Committee, such body may, by resolution, authorize the appointment, specifying therein the number.

Additional clerks—how appointed.

4. No clerk shall be allowed compensation in either of said departments, appointed in any other way.

What clerks only shall receive pay.

§ 187. No Journalizing, Recording, Enrolling, or Engrossing Clerk shall be appointed by the Secretary of the Senate or Clerk of the House, until such Clerk has been examined by the Enrolling Committee, and certified to their respective Houses to be competent and well qualified to the discharge of the duties required of him; and such Clerk shall be removed, at any time, upon the recommendation of the Enrolling Committee of the House in which he is employed.

Qualification and removal of Journalizing, Recording, Enrolling and Engrossing Clerks.

Chapter 1.—General Provisions in Regard to Judicial Power.

§ 188. The Secretary of the Senate and the Clerk of the House of Representatives must, within ten days after the adjournment of each session, file, in proper order, all the papers and documents of their respective Houses.

Secretary
and Clerk
must file pa-
pers and
documents.

§ 189. The records, papers, and documents thus filed, must be delivered to the Secretary of State, who, upon receipt of the same, must certify that such Secretary and Clerk have respectively complied with said requisitions, and the Treasurer shall not pay their several salaries until such certificate is produced.

Secretary
and Clerk
shall not be
paid until
they have
filed papers.

§ 190. When there is a meeting of both branches of the General Assembly in any one chamber, said Secretary and Clerk shall be present and join in the discharge of the duties required, and shall enter on the Journals of each the proceedings.

Secretary
must aid
when both
Houses meet

TITLE V.

THE JUDICIAL DEPARTMENT.

CHAPTER I.

GENERAL PROVISIONS IN REGARD TO JUDICIAL POWER.

SECTION.

- 191. Judicial power—where vested.
- 192. Rules of Court shall be observed.
- 193. Judge interested shall not preside.
- 194. Power of the Court.

SECTION.

- 195. Records shall not be removed.
- 196. Minutes read and signed by Judge.
- 197. The Court may act when no Clerk.

§ 191. The Judicial power of the State is vested in such tribunals as are created by the Constitution, and such other Inferior Courts as are or may be established by law, and such persons as are or may be specially invested with powers of a judicial nature.

Judicial
power—how
vested

§ 192. The rules of the respective Courts, legally adopted and not in conflict with the Constitution of the United States, of this State, or the laws thereof, are binding and must be observed.

Rules of
Court.

§ 193. No Judge or Justices of any Court, no Ordinary, Justice of the Peace, nor presiding officer of any inferior judicature or commission, can sit in any cause or proceeding in which he is pecuniarily interested, or related to either party within the fourth degree of consanguinity or affinity, nor in which he has been of counsel, without the consent of all the parties in interest.

When Ju-
dicial officer
is incomp-
tent to try
cases.

Chapter 1.—General Provisions in regard to Judicial Power.

§ 194. Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary, to prevent interruption, disturbance, or hindrance to its proceedings.

Courts have power—
To enforce order in its presence.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

Before bodies acting under its authority.

3. To compel obedience to its judgments, orders, and process, and to the orders of a Judge out of Court, in an action or proceeding therein.

Compel obedience to its process and judgment.

4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

To control its officers.

5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary, in the exercise of its powers and duties.

To administer oaths.

6. To amend and control its process and orders, so as to make them conformable to law and justice, and to amend its own record so as to make them conform to the truth.

To amend its process, records, etc.

§ 195. No records or papers of any Court must be removed out of the County, except in cases of invasion whereby the same may be endangered, or unless by order of the Court.

When records may be removed.

§ 196. The minutes of every Court of record must be read each morning by the Clerk in open Court, and on the adjournment of the Court must be signed by the Judge, Judges, or Justices thereof; but if not signed are valid unless repudiated by the Court.

Minutes must be read and signed.

§ 197. The acts of a Court shall not lack validity for the want of a Clerk, and whenever there is no Clerk, or none to be had, or he is incapable of discharging his duty, and any Court performs that duty itself, its action as such is valid.

Court may perform duties of Clerk when there is none.

CHAPTER II.

THE SUPREME COURT AND ITS OFFICERS.

ARTICLE 1.—*The Supreme Court and its Judges.*

ARTICLE 2.—*The Clerk.*

ARTICLE 3.—*The Reporter.*

ARTICLE 4.—*The Sheriff, or Marshal.*

Article 1.—The Supreme Court and its Judges.

ARTICLE I.

THE SUPREME COURT AND ITS JUDGES.

SECTION.

198. Judges of the Supreme Court.
 199. Their oath of office.
 200. Two may hold the Court.
 201. Who are eligible for Supreme Bench.
 202. Vacancies—how filled.

SECTION.

203. When there is but one Judge, etc.
 204. Unanimous decisions how reversed.
 205. The powers of Supreme Court, etc.
 206. Two of the Judges must concur, etc.
 207. Officers of the Supreme Court.

§ 198. The powers of the Supreme Court are vested in, and its duties performed by, three Judges, [one of whom shall be styled the Chief Justice,] (a) who are elected for the term of six years by the General Assembly.

§ 199. Before entering on the discharge of their duties they shall take the oath prescribed for Judges of the Superior Courts, and all other oaths required for civil officers.

§ 200. [They, or two of them, may hold said Court, and the oldest Judge in commission, in the absence of the Chief Justice, is President thereof, but without any greater powers than his associate; and when the office of the present oldest Judge in commission shall become vacant by death, resignation, or otherwise, a Chief Justice shall be appointed or elected to fill such vacancy.] (a)

§ 201. No person is eligible as such unless he has been duly admitted and licensed to plead and practice in the Courts of Law and Equity in this State for ten years prior to his election. Within twenty days after the election the Governor shall issue his commission.

§ 202. In case of a vacancy (from any cause) the Governor shall appoint and commission some qualified person to supply it until the next meeting of the General Assembly, who shall elect some one for the unexpired term. If a vacancy occurs during the session of the General Assembly, there must be no appointment, but if it closes without an election the Governor shall appoint some person to hold the office until the action of the General Assembly.

§ 203. When two or all of the Judges are disqualified from deciding any cause or proceeding pending in their said Court, they must certify the same to the Governor, who must direct a commission to issue to any two or three Judges of the Superior

Article. 1.—The Supreme Court and its Judges.

Court whom he may select, and who have not performed any judicial duty in the cause, empowering them in the particular cause stated to exercise the powers of a Judge of the Supreme Court therein, as in cases of vacancy, at the time and place for hearing and determining the same.

§ 204. A decision concurred in by three Judges can not be reversed or materially changed, except by a full bench, and then after argument had, in which the decision, by permission of the Court, is expressly questioned and reviewed; and after such argument the Court in its decision shall state distinctly whether it affirms, reverses, or changes such decision.

How unanimous decisions may be reversed.

§ 205. The Supreme Court has authority—

Supreme Court has authority—

1. To exercise appellate jurisdiction, and that only, and in no case to hear facts or examine witnesses.

To exercise appellate jurisdiction alone.

2. To hear and determine all causes, civil and criminal, that may come before it, and to grant judgments of affirmance or reversal, or any other order, direction, or decree required therein, and if necessary to make a final disposition of the cause, but in the manner prescribed elsewhere in this Code.

To hear and determine cases that come before it and to give final judgment.

3. To grant any writ necessary to carry out any purpose of its organization, or to compel any inferior tribunal or officer thereof to obey its order.

To grant writs to enforce its orders.

4. To appoint its own officers, and to commission any person to execute any specific order it may make.

To appoint its own officers.

5. To establish, amend, and alter its own rules of practice, and to regulate the admission of Attorneys.

To make rules of practice.

6. To punish for contempt by the infliction of a fine as high as five hundred dollars, and imprisonment not exceeding ten days, or both.

To punish for contempt.

7. To exercise such other powers, not contrary to the Constitution, as are or may be given to it by law.

And exercise all legal powers.

§ 206. The concurrence of two of said Judges is necessary to make a reversal, or to grant any order disturbing the judgment of the Court below; and when only two preside in a cause, and they disagree as to the reversal or as to said order, the judgment stands affirmed.

Two Judges must concur to reverse.

When two only preside their disagreement affirms

§ 207. The officers of the Supreme Court are a Clerk, a Reporter and assistants, a Sheriff and deputies.

The officers of the Supreme Court

Article 2.—The Clerk.

ARTICLE II.

THE CLERK.

SECTION.

208. His appointment and oath of office.

209. May appoint a deputy.

210. The duties of the Clerk enumerated.

SECTION.

211. Must tax costs, etc.

212. Who liable for costs, etc.

Appoint-
ment and
oath of clerk

§ 208. The Clerk of the Supreme Court holds his office for six years, unless removed for incapacity, improper conduct, or neglect of duty; and before entering upon his duties he must take an oath faithfully to discharge them, and also all other oaths required of civil officers.

May ap-
point a depu-
ty.

§ 209. He may appoint one or more deputies in his discretion, under such rules as the Court may adopt, he being responsible for the faithful performance of their duties; and when so appointed their powers and duties are the same as his.

§ 210. It is his duty—

Must keep
an office at
Capitol.

1. To keep an office at the seat of Government in one of the apartments of the Capitol, where all books, records and archives, and the seal of the Court shall remain.

Must at-
tend the
Courts.

2. To attend all sessions of the Court and obey all of its lawful orders.

Must keep
minutes, re-
cords, etc.

3. To keep in well bound books fair and regular minutes of the Court's proceedings, a record of its judicial acts, a docket of its causes, and such other books as said Court may require him to keep.

Must cer-
tify records
and papers.

4. To certify, when required, upon payment of his lawful fees, all minutes, records, or files of said Court.

Must pub-
lish order of
Circuits.

5. To arrange the cases on the docket by Circuits, and to give notice in one of the newspapers, printed at the place where the Court is to be held, twenty days previous to its session, of the order of arrangement.

Must re-
port all pau-
per cases to
the Govern-
or.

6. To submit to the Governor a fair statement of each criminal pauper case, showing the items of costs, the nature of the crime charged, and the County from whence it came, under the seal of the Court, as a condition to a warrant in his favor for their payment.

Must make
out remitter

7. To make out a remitter of every case within ten days from the adjournment of the Court, and to transmit it to the attorney of the party prevailing, together with a certificate of the amount

Article 3.—The Reporter.

of the costs, and by whom paid, which remitter shall consist of a copy of the judgment of the Court as entered on the minutes, and nothing more.

8. To issue and sign all writs and processes of every description issued under the authority of the Court. Must issue all writs and processes.

9. To administer such oaths and take such affidavits as the business of the Court or the law may require. Must administer oaths.

10. To discharge whatever other duty may be required by law, or necessarily appertains to his office. Must perform all other official duties.

§ 211. When judgment shall be pronounced in any cause, he shall tax the costs thereof, item by item, which shall be entered on the minutes at the foot of the judgment without charge. He shall make no charge for attaching the seal to the remitter, nor to any precept issued by him, nor for any thing but services actually rendered; nor shall he record the bill of exceptions, or transcript of the records from the Court below. Must tax costs, and charge only for services rendered.

§ 212. Every attorney for the plaintiff in error, who argues or presents a cause to the Supreme Court, is liable to the Clerk for costs, except in a pauper case. Who are liable for costs.

ARTICLE III.

THE REPORTER.

SECTION.

- 213. Appointment and oath of Reporter.
- 214. May appoint an assistant.
- 215. Must attend Courts, etc.

SECTION.

- 216. Reports must not contain arguments.
- 217. Penalty for failing to publish reports.
- 218. Copyright reserved to the Reporter.

§ 213. The Reporter of the Supreme Court holds his office for the same term and on the same conditions as the Clerk, and before entering on his duties must take the same oaths. Appointment and oath of the Reporter.

§ 214. He may, with consent of the Court, under such rule as they may adopt, appoint an Assistant Reporter, whose duties are the same as the Reporter's. May appoint assistant.

§ 215. It is his duty—

1. To attend all sessions of the Supreme Court by himself, or his assistant. Must attend the Courts.

2. To publish in good and substantial form the decisions of said Court as written out, within six months of the time of their delivery to him. Must publish decisions.

3. To furnish one copy of each volume of his Reports to each

Article 4.—The Sheriff.

Must furnish copies to the State and certain officers.

Judge of the Supreme Court; one copy to the Clerk thereof, to be kept in his office; twenty-five copies to the State, to be delivered to the State Librarian; and a copy to each Clerk of the Superior Courts, to be kept in their offices. For such copies he shall be paid by the Governor at the price of three dollars per copy.

Reports not to contain argument of counsel.

§ 216. The volumes of Reports must not contain any argument, or brief of counsel, beyond a statement of the points and authorities.

Penalty for failing to publish Reports as the law requires

§ 217. If he fails to publish his volumes of Reports within the time designated, he forfeits one-fourth of his salary for every additional month's delay, unless a majority of the Court will certify that the delay was not from his fault, or of those under his control; and if he fails to publish and furnish them as required in preceding Section, he also forfeits one-fourth more of his salary, and must be removed by the Supreme Court.

Copyright shall be Reporter's.

§ 218. He shall have the copyright to his Reports in addition to his salary.

ARTICLE IV.

THE SHERIFF.

SECTION.

219. Sheriff shall attend Supreme Court.
220. If he fails the Court may appoint.

SECTION.

221. Sheriff's fees in the Supreme Court.

Duty of Sheriff of the County where the Court is held

§ 219. The Sheriff of the County wherein a session of the Supreme Court is holden, or his deputy, must attend daily the sessions thereof, obey all lawful orders, execute all lawful commands and process, and preserve order.

Court may appoint an officer.

§ 220. On failure of said Sheriff, or a lawful deputy, to attend and discharge the duties required, or any part thereof, the Court may appoint some fit and proper person for such purpose.

Sheriff's fees in Supreme Court

§ 221. He shall receive for his services the fees allowed in the Superior Court for like services, and when he performs a journey in the discharge of his duties he is entitled to the same pay for mileage as a Marshal of the United States.

Article 1.—The Superior Court and its Judges.

CHAPTER III.

THE SUPERIOR COURTS AND THEIR OFFICERS.

ARTICLE 1.—*The Superior Court and Judges.*ARTICLE 2.—*The Clerks.*ARTICLE 3.—*The Receiver.*

ARTICLE I.

THE SUPERIOR COURT AND ITS JUDGES.

SECTION.

- 222. Election and official term of Judges.
- 223. Their oath of office.
- 224. Vacancies—how filled.
- 225. Time of election.
- 226. Judges elected to fill vacancies.
- 227. No special election—when.
- 228. Who are eligible to Judgeship.
- 229. Shall not practice law.
- 230. Shall not be deprived of his office.
- 231. Must hold Court twice a year.
- 232. His jurisdiction.

SECTION.

- 233. Duties of the Judge.
- 234. Shall deliver his charge in writing.
- 235. Such charge shall be filed.
- 236. Jurisdiction of the Superior Courts.
- 237. Powers enumerated.
- 238. When the Judge is absent.
- 239. Can only exercise powers granted.
- 240. When the Judge is disqualified.
- 241. May be impeached.
- 242. Perform no judicial act out of State.

§ 222. Judges of the Superior Courts are elected by the people of and for each Judicial Circuit, in the manner and at the time hereinafter prescribed, and hold their offices for four years, unless sooner removed in the manner prescribed by the Constitution.

Election
and official
term of the
Judges.

§ 223. Before entering on the duties of their office, they must take the oath required of all civil officers, and in addition the following—viz :

Their oath.

“I swear that I will administer justice without respect to persons, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Judge of the Superior Court of this State, according to the best of my ability and understanding, and agreeable to the laws and Constitution of this State, and the Constitution of the United States. So help me God.”

§ 224. When a vacancy occurs (or from some cause there is a failure to elect), the Governor shall appoint some qualified person to fill such vacancy, and shall order a special election. [And

Vacancies
—how filled
—when de-
clared.

Article 1.—The Superior Court and its Judges.

when, on the day fixed by the Constitution for the election of Judges of the Superior Court and Solicitors General, there is no majority vote cast, and therefore no election, the office in such Circuit shall be, and is hereby, declared vacant; and such vacancy shall be filled as is now provided by law.] (a)

Time of election. § 225. Such election shall be held on the first Wednesday in January next thereafter, *provided* there is time for the Governor's proclamation of such election to be advertised for as much as thirty days preceding said day.

Judges elected to fill a vacancy. § 226. Judges thus elected hold their offices for a full term of four years, and must be by the Governor so commissioned.

The appointee holds without an election. § 227. If, at the time a vacancy occurs, the unexpired time of the (former) incumbent does not exceed twelve months, the person appointed holds his office for the unexpired term, and there shall be no special election.

Who are eligible to the Circuit Judgeship. § 228. No person is eligible to such Judgeship who shall not have been a resident citizen of this State for ten years just preceding his election or appointment, and who shall not have been an inhabitant of the Circuit over which he is to preside for at least one year next preceding the said time, and who shall not have been duly admitted and licensed to plead and practice in the Superior Courts of this State at least five years prior to the same.

Judges shall not practice law. § 229. Such Judges are prohibited from practicing law in any of the Courts of this State between the times of their election and qualification, but they may practice until their qualification in any case in which they may have been actually employed before their election; and they are also prohibited from practicing as attorneys, proctors, or solicitors, in the District or Circuit Courts of the United States after their election or while in commission.

Attaching the County of his residence to another Circuit does not oust him from office. § 230. A person having been appointed or elected a Judge of any Circuit can not be deprived of his office by attaching the County in which he resides to a different Judicial Circuit, but he continues to discharge its duties as though he resided in the Circuit.

Must hold Court in each County of his Circuit twice a year. § 231. Said Judges must hold the Superior Courts of each Circuit at the County site and Court House (if any) of each County, or other place therein designated by law, twice each year, at such times as is now or may be prescribed by the General Assembly.

Article 1.—The Superior Court and its Judges.

§ 232. The jurisdiction of the Judges of the Superior Courts is co-extensive with the limits of this State, but they are not compelled to alternate unless required by law.

Jurisdiction co-extensive with the State.

§ 233. Each of said Judges shall discharge all the duties required of him by the Constitution and laws for the Circuit for which he was elected or appointed, although he may hold Courts in other Circuits, and may also exercise other judicial functions for them when permitted by law.

Duties of Judge.

§ 234. The Judges of the Superior Courts of this State shall, in all cases of felony, and on the final or appeal trial of all civil cases tried before them, give their charges to the jury in writing; that is to say, shall write out their charges and read the same to the jury, when the counsel for either party shall require them to do so; and that it shall be error for such Judge to give any other or additional charge than that so written out and read.

Written charges in certain cases

§ 235. The charge so written out and read as aforesaid shall be filed with the Clerk of the Court in which the same was given, and shall be accessible to all persons interested in the same; and the Clerk shall give certified copies thereof to any person applying for the same, upon the payment of the usual fee.

Shall be filed.

§ 236. The Superior Courts have authority—

1. To exercise original, exclusive, or concurrent jurisdiction (as the case may be) of all causes, both civil and criminal, granted to them by the Constitution and laws.

Jurisdiction of Superior Courts in civil and criminal cases.

2. To exercise the powers of a Court of Equity.

Equitable powers.

3. To exercise appellate jurisdiction in all civil cases tried by a jury in the County Court, or where judgment is confessed, and from judgments of the Ordinary.

May try appeals from the County Courts, etc.

4. To exercise a general supervision over all inferior tribunals, and to review and correct in the manner prescribed by law the judgments of the Justices of the Inferior Court, the Justices of the Peace, Corporation Courts or Councils, or any inferior judiciary, or any person exercising judicial powers, and of the Ordinary, except in cases touching the probate of wills and the granting of letters of administration, when there must be a special jury impaneled.

May correct errors of inferior tribunals.

5. To punish contempt by fines not exceeding two hundred dollars, and by imprisonment not exceeding twenty days.

May punish for contempts.

6. To exercise such other powers, not contrary to the Constitution, as are or may be given to such Courts by law.

May exercise all other legal powers

§ 237. The Judges of the Superior Courts have authority—

Article 1.—The Superior Court and its Judges.

Judges may grant writs of *certiorari*, *supersedeas*, etc.

1. To grant for their respective Circuits writs of *certiorari*, *supersedeas*, *quo warranto*, *mandamus*, *habeas corpus*, and bails in actions *ex-delicto*.

May grant bills *quia-timet*, etc.

2. To grant bills *quia-timet*, writs of injunction, prohibition, and *ne-exeat*.

May grant other writs.

3. To grant all other writs, original or remedial, either in law or equity, that may be necessary to the exercise of their jurisdiction, which is not expressly prohibited.

May hear and determine returns to *habeas corpus*, motions to dissolve injunctions, etc.

4. To hear and determine questions arising upon writs of *habeas corpus* or bail, when properly brought before them; all motions to grant, revive, or dissolve injunction, to give new security or lessen the amount of bail, and to perform any and all other acts required of them at Chambers.

May administer oaths.

5. To administer oaths and to exercise all other powers necessarily appertaining to their jurisdictions, or which may be granted them by law.

When a Judge is absent from his Circuit or disqualified, another Judge may exercise authority.

§ 238. The authority granted in the preceding Section to each Judge in his own Circuit may be exercised by any Judge of another Circuit whenever the resident Judge is absent from the Circuit, so that the business can not be done as speedily as necessary, or is indisposed or interested, or is laboring under any disqualification or inability to serve, or in case the Circuit should be, from any cause, without a Judge. The authority, when thus exercised, should show the grounds.

Can only exercise granted powers out of term time.

§ 239. Said Judges can not exercise any power out of term time, except the authority is expressly granted; but they may, by order granted in term, render a judgment in vacation.

When Judge is disqualified he must obtain the services of another Judge, or an attorney may preside by consent.

§ 240. When from any cause the Judge of the Superior Court is disqualified from presiding, he shall procure the services of a Judge of another Circuit to try said cause, if he has to appoint an adjourned term for that purpose. If the parties litigant consent thereto and select any attorney practicing in the Court to preside in such a case, the Judge shall have such consent entered on the minutes, and the attorney so selected shall exercise all the functions of Judge in that case.

May be impeached.

§ 241. If any Judge does not comply with the provisions of the preceding Section within a reasonable time, when it is in his power to do so, it is a ground of impeachment.

Can perform no judicial act out of the State.

§ 242. No Judge of the Superior Courts shall have authority to perform any judicial act required of him by law when beyond the jurisdiction of this State.

Article 2.—The Clerks of the Superior Courts.

ARTICLE II.

THE CLERKS OF THE SUPERIOR COURTS.

SECTION.

- 243. Election Clerk Superior Court.
- 244. Can not practice law.
- 245. Vacancy—how filled.
- 246. Elected to fill a vacancy.
- 247. In case of a tie, etc.
- 248. An appointment must be made.
- 249. Who may act.
- 250. Appointee may hold to end of term.
- 251. Judge may appoint in certain cases.
- 252. How long such appointee may hold.
- 253. Oath of Clerk of Superior Court.

SECTION.

- 254. Must give bond and security.
- 255. May appoint deputies.
- 256. The place of the office—duties.
- 257. Powers of the Clerk, etc.
- 258. Penalty for a failure of duty.
- 259. Clerk subject to rule.
- 260. Subject after retiring from office.
- 261. How removed from office.
- 262. His office subject to be examined.
- 263. Pay when not otherwise provided.
- 264. Proceedings if pay is refused.

§ 243. The Clerks of the Superior Courts are elected for the term of two years, and are eligible during the same time to be also Clerks of the Inferior Courts.

Election of Clerk of the Superior Court.

§ 244. No person is eligible to the office of Clerk, or to perform any official duty as such, who, while in such capacity, practices law in his own name or another's, as a partner or otherwise, in any Court of Law or Equity in this State, except in his own case.

Clerk can not practice law.

§ 245. If a vacancy occurs (or will shortly), any two or more Justices of the Inferior Court of the County where it happens shall give notice in one or more of the public gazettes of said County (if any), and at the Court House, and at three or more of the most public places of said County, twenty days previous to the day of election, which shall be appointed by them.

Vacancy—how supplied.

§ 246. The person elected on said day shall hold his office for the unexpired term of his predecessor. The returns of the election must be made to the Governor, who must commission him.

One elected to fill a vacancy holds only the unexpired term.

§ 247. Should any two or more candidates, at an election to fill said vacancy or at a regular election, have the highest and an equal number of votes, said Justices shall appoint and advertise another election in the manner prescribed in the preceding Sections, and so do until a choice is made.

In case of a tie a Clerk is appointed and a new election ordered.

§ 248. As soon as a vacancy occurs, or in anticipation of it, said Justices, or a majority of them in commission, must meet and appoint some qualified person to discharge the duties of Clerk until the vacancy is filled.

Until an election is had a Clerk must be appointed.

§ 249. If from any sudden emergency there is a vacancy, and it is not immediately supplied, the Clerk of the Inferior Court must discharge the duties of said Clerk until one is appointed;

Clerk of Inferior Court may act as Clerk of Superior Court in an emergency, etc.

Article 2.—The Clerks of the Superior Courts.

and in case the vacancy occurs at the same time in both offices, the Ordinary or his clerk shall thus act.

If only six months of an unexpired term, the appointee to fill a vacancy holds out the term. § 250. When a vacancy occurs, and it is not more than six months from the time the election can be appointed by said Justices and held until the existing term will expire, the person or persons appointed shall discharge the duties of the office for the balance of the term, and there shall be no special election.

Judge may appoint a Clerk in certain cases. § 251. If there is a vacancy, or the Clerk and his deputy for any reason do not act as Clerk at the time provided by law for holding any of said Superior Courts, the presiding Judge thereof shall appoint a Clerk, who holds his office during the term and for ten days thereafter, and any act that he does during said time that the Clerk could have done is valid.

Such appointee may hold until an election. § 252. If by the expiration of said time there is no one else to act as Clerk, said last mentioned appointee may continue as such until there is an appointment or election; and any appointee or other person lawfully discharging said duties shall continue to do so until there is an election and qualification.

Oath of the Clerk of the Superior Court. § 253. The Clerks, before entering upon the discharge of their duties, whether appointed, elected, or such by operation of law, must, besides the oath required of all civil officers (unless already taken), take and subscribe to the following oath:

“I do swear that I will truly and faithfully enter and record all the orders, decrees, judgments, and other proceedings of the Superior Court of the County of ———, and all other matters and things which by law ought by me to be recorded; and that I will faithfully and impartially discharge and perform all the duties required of me to the best of my understanding. So help me God.”

Appointees to the Clerkship must take oath. When said oath is taken by the Clerks of the Inferior Court, the Ordinaries, or their deputies acting in a certain contingency as Clerks of the Superior Court, they may take it before any person authorized to administer an oath, and enter it on the minutes of the Superior Court.

Must give bond. § 254. They shall also at the same time (except those appointed by the Judges of the Superior Courts and those so by operation of law) execute a bond in the sum of three thousand dollars, with good security.

§ 255. They shall have the power to appoint a deputy or deputies, and may require from them bonds with good security, who

Article 2.—The Clerks of the Superior Courts.

shall take the same oath as the Clerks do before entering upon the discharge of their duties, and whose powers and duties are the same as long as the principal continues in office, and not longer, for the faithful performance of which they and their securities are bound.

Clerks of the Superior Court may appoint deputy, who must take oath and give bond.

§ 256. It is the duty of the Clerks of the Superior Court—

1. To keep their offices and all things belonging thereto at the County site and at the Court House, unless impracticable from any cause, when, by special permission of the Justices of the Inferior Court, it may be kept at some other designated place not more than one mile therefrom, of which public notice must be given.

Where office must be kept.

2. To attend all sessions of the Courts and keep fair and regular minutes of their proceedings from day to day, including a transcript of the Judge's entry on his dockets when not more fully shown in a book kept for that purpose.

Clerk must attend Court and keep the minutes, including entries on the Bench Docket.

3. To issue and sign (and attach seals thereto when necessary) every summons, subpoena, writ, execution, process, or order, or other paper under the authority of the Court.

Must issue processes of all kinds.

4. To keep in Court, convenient of access, the following dockets—to wit: a Common Law Docket of civil cases, in which must be entered by appearance term the names of the parties and attorneys, the nature of the action, and the Sheriff's return; an Appeal Docket and an Equity Docket, in which must be entered all the cases to the respective terms to which they are returned or stand for trial, together with other entries, as in the case of the Common Law Docket.

Must keep certain dockets as follows: Common Law Docket.

Equity Docket.

A Claim Docket, a Certiorari and an Illegality Docket in the same manner. A Motion Docket for entering all motions to be submitted to the Court, showing the nature of the motion, and the parties and attorneys thereto.

Claim Docket.

Motion Docket.

A Subpoena Docket for civil cases, and one for criminal cases, in which must be entered the case in which the subpoena issues, the date, the name of witness, for whom issued, and to whom delivered, and any return of the Sheriff thereon.

Subpoena Dockets.

In the former must be likewise entered, and in the same manner the issuing of commissions. A Trial Docket of Criminal Cases in which must be entered all the criminal cases in the order the indictments are found, the nature of the offense, and the attorneys for the defense.

Criminal Docket.

Article 2.—The Clerks of the Superior Courts.

A docket in which must be entered all criminal cases which have been on the Criminal Docket for as much as five years without any existing arrest, and which must be inspected by the Court at least once a year, that if necessary any case may be re-transferred to the Criminal Docket.

A docket of criminal cases in which there is no arrest for five years

Execution Docket, and enter therein the names of plaintiffs, their attorney, and the defendants, the amount of principal and interest and costs; the date, the term to which returnable, to whom and when delivered, and by whom and when returned, and an entry of satisfaction or nulla bona, as the case may be, with the dates thereof.

Execution docket.

Duplicates of the Common Law, Appeal, and Criminal Dockets, one for the use of the Bench, the other for the use of the Bar, in which last must be copied from term to term all the entries made in the former. All appeal cases must be entered on the same Appeal Docket in the order they are entered on the minutes, and from the Inferior Court in the same order and at the time received. Divorce cases are first to be entered on the Equity Docket, and after one trial are to be entered on the Appeal Docket in their proper order from the minutes.

Copy dockets for the Bar.

5. To record in well bound books within six months after the final determination of any civil suit, all the proceedings relating thereto.

Must keep record of civil suits.

6. To keep well bound books for recording all deeds, mortgages, and other liens and bills of sale separately.

Must keep record of deeds.

7. To have properly stamped and labeled, and numbered or lettered, if required, all the books herein enumerated, and to keep for each (except the dockets called by the Court), a proper index, and to supply any of said books or indexes needed, and to transcribe the contents of any books of record which may be in a dilapidated condition.

Must label and index the books of his office.

8. To keep all the books, papers, dockets, and records belonging to their office with care and security, and the papers filed, arranged, numbered, and labeled, so as to be of easy reference.

Must preserve the books so as to be of ready reference

9. To procure and preserve for public inspection a complete file of all newspapers in which their advertisements appear, and have them bound in volumes of suitable size to be deposited and kept with their other records.

Must preserve and have bound news papers in which he advertises.

10. To keep at their offices all publications of the Laws of the United States furnished by the Governor, and the Laws and

Must keep in their offices all books

Article 2.—The Clerks of the Superior Courts.

Journals of this State, all Statute Laws, Digests, this Code, the Supreme Court Reports, and all other law books, or other public documents distributed to them for the public convenience. and documents distributed, for public convenience.

11. To procure within thirty days after their qualification (if not already done), a substantial seal of office with the name of the Court and County inscribed thereon. Must keep an official seal.

12. To make out and deliver to any applicant, upon payment of legal fees, a correct transcript, properly certified, of any minute, record, or file of their office. Must certify copies of papers.

13. To make out transcripts of the record of all cases for the Supreme Court as the laws require. Must make out records for Supreme Court.

14. To make a minute on all conveyances or liens of the day left for record, and the day recorded, to be signed officially, which shall be evidence thereof, and to attest deeds and other written instruments for registration. Must make minute of record of deeds, and attest deeds for registration.

15. To administer all oaths during term time required by the Court, and to record all oaths required by law. Must administer oaths.

16. To perform such other duties as are, or may be required by law, or as necessarily appertain to their offices. Must do other duties of office.

§ 257. The Clerks of said Courts have authority—

1. To administer oaths and take affidavits in all cases permitted by law, or where the authority is not confined to some other officer. May administer oaths by law.

2. To receive the amounts of all costs due in the Court of which they are Clerks, and other sums whenever required to do so by law, or order of the Judge, and not otherwise. May receive costs due.

3. To advertise under the same rules and restrictions as Sheriffs. May advertise.

4. To exercise such other powers as are or may be conferred upon them by law. May exercise other legal powers.

§ 258. Any such Clerk failing to perform any duty, or to exercise any authority when required, set forth in the two preceding Sections, is subject to be fined for each offense by the presiding Judge, during term time, as for a contempt, on information of any party aggrieved, of which he shall have notice in writing. Penalty for failure of duty.

§ 259. If any of such Clerks receive any money on any suit or judgment from their Courts, or otherwise, and do not faithfully account for it, they are liable to rule as Sheriffs are, and they and their sureties are likewise liable on their official bond. Clerk subject to rule.

§ 260. They are subject to the rule and order of their respective Courts after their retirement from office as Sheriffs are. Subject to rule after out of office.

Article 3.—The Receiver.

§ 261. They are subject to be removed from office by the Judge of the said Court for any sufficient cause, including incapacity or misbehavior in office, charges for which must be exhibited to the Court in writing, and the facts tried by a special jury, such Clerk being entitled to a copy of the charges three days before trial.

§ 262. Their offices are subject to an examination by the Grand Juries, their committees, or any person whom they may especially empower to report to the same, or a succeeding Grand Jury, or to the Judge of the Superior Court, who shall submit in writing the condition of said offices, and specify any neglect of duty, or any thing done wrongly or corruptly by such Clerks.

§ 263. For any services rendered, or expenses incurred legally, by said Clerks for their offices where no pay is specially provided, they must be paid out of the County treasury by order of the Justices of the Inferior Court, after examining and passing upon their accounts and vouchers, and finding them correct and reasonable.

§ 264. If said Justices refuse to allow and order such accounts paid, said Clerks may apply for and obtain a *mandamus* from the Judge of the Superior Court, who shall hear and determine the questions, and submit any disputed fact to a special jury.

ARTICLE III.

THE RECEIVER.

SECTION.

265. Receiver may be appointed—when.

266. Funds invested pending litigation.

267. Duties and liabilities of Receiver.

SECTION.

268. Receiver required to give bond.

269. Receivers of banks, etc.

§ 265. When any fund or property may be in litigation, and the rights of either or both parties can not otherwise be fully protected, or when there may be a fund or property having no one to manage it, a Receiver of the same may be appointed (on a proper case made), by the Judge of the Superior Court having jurisdiction thereof, either in term time or vacation, and such Receiver is an officer of said Court.

§ 266. The presiding Judge, in his discretion under the law, may order any fund in the hands of a Receiver, or any other officer of Court awaiting the determination of a protracted litigation, to be invested in State bonds.

Article 3.—The Receiver.

tion, to be invested in State bonds, as executors and administrators are authorized to do.

§ 267. The Receivers so appointed must discharge their trust according to the order or decree of the Courts appointing them, and are at all times subject to their orders, and may be brought to account and removed at their pleasure.

Duty and
liability of
Receiver.

§ 268. The Judges of the Superior Courts may, in their discretion, require such Receivers to give bonds conditioned for the faithful discharge of the trust reposed, and if they require them, they must fix the amount and the sufficiency of the security, and also regulate their compensation.

Judge may
require Re-
ceiver to
give bond.

§ 269. Receivers of banks, or other corporations hereafter appointed by any power, are amenable to, and must make their returns to, the Superior Court of the County where they reside at the time of the appointment.

Receivers
of corpora-
tions must
make return
to Superior
Court.

CHAPTER IV.

THE COUNTY COURT AND ITS OFFICERS.

ARTICLE 1.—*The County Court.*

ARTICLE 2.—*The County Judge.*

ARTICLE 3.—*The County Solicitor.*

ARTICLE 4.—*The Clerk of the County Court.*

ARTICLE 5.—*The Sheriff and Bailiffs.*

ARTICLE I.

COUNTY COURT.

SECTION.

- 270. Organization and name.
- 271. Sessions and time of holding.
- 272. Where to be held.
- 273. Who presides when Judge is disabled
- 274. Jurisdiction generally.
- 275. At semi-annual sessions.
- 276. Quarter sessions.
- 277. Extra sessions.
- 278. Criminal jurisdiction.
- 279. A Court of Inquiry—when.
- 280. Is a Court of Record.
- 281. Its powers.
- 282. Proceeding at semi-annual sessions.
- 283. Quarter sessions.
- 284. Attachments—when returned.
- 285. Jury box and Grand Jury.
- 286. Petit Jury.

SECTION.

- 287. Oath of Juries.
- 288. Amendments.
- 289. Defenses.
- 290. Time of trial—continuances.
- 291. Mode of trial.
- 292. Claims—how tried.
- 293. Attachments—how tried.
- 294. Attendance of witnesses.
- 295. Moulding verdicts, etc.
- 296. Appeals.
- 297. Certiorari in civil cases.
- 298. In criminal cases.
- 299. Duty of Solicitor General.
- 300. Sales—how made.
- 301. Criminal practice.
- 302. Indictment—when tried.
- 303. Counsel and witnesses for accused.

Article 1.—County Court.

§ 270. A Court shall be organized in each County in this State,
 Name. to be called the County Court.

§ 271. The County Court shall hold semi-annual sessions in the
 Sessions. several Counties on the same days as the Inferior Courts are now held; and two additional terms, which shall be known as quarter sessions, which shall be held at times as near equi-distant between the semi-annual sessions as practicable—said time to be fixed by the County Judge.

§ 272. Said Court shall be held at the Court House of the
 Where held. County.

§ 273. In case of a vacancy, or when the Judge can not preside,
 Vacancy or from sickness or from any other cause, either of the Justices of
 disability of the Inferior Court may preside until such vacancy is filled or such
 Judge. disability is removed.

§ 274. The County Court shall have the jurisdiction in all civil
 Jurisdic- and criminal cases hereinafter specified, and such jurisdiction shall
 tion. be exercised as hereinafter provided.

§ 275. Said Court, at its semi-annual sessions, shall have con-
 At semi- current jurisdiction with other courts of law in all civil cases
 annual ses- where the amount involved is over fifty dollars, of which exclu-
 sions. sive jurisdiction is not vested in some other Court, including jurisdiction in legitimating persons and changing names.

§ 276. The jurisdiction of said Court at the quarter sessions
 At quarter shall be confined to criminal cases, and to civil cases without limit
 sessions. as to amount, arising out of the relation of master and servant, whether suits for wages, applications to enforce performance, or for other purposes; also applications for the eviction of trespassers, intruders, and tenants holding over, for the partition of personal property, for the trial of possessory warrants, or proceedings under distress warrants, and *habeas corpus* cases.

§ 277. The Judge of said Court shall have power, whenever he
 Extra ses- shall deem it necessary for the delivery of the jail or for the trial
 sions. of the cases specified in the preceding Section, to call extra sessions of said Court; but at such extra sessions there shall be no jury trial in civil cases unless demanded by one of the parties thereto, in which case the Judge shall cause a jury of five to be immediately summoned to try the same. In all other cases the proceedings shall be the same, in both semi-annual and quarter sessions.

§ 278. The criminal jurisdiction of the County Court, at its

Article 1.—County Court.

semi-annual and quarter sessions, extends to all offenses of which Criminal jurisdiction.
exclusive jurisdiction is not vested in some other Court.

§ 279. If any offense is charged which is within the jurisdiction When a Court of Inquiry.
of the County Court, and upon the trial thereof it shall appear that the crime committed is of a grade beyond its jurisdiction, the trial thus begun shall be regarded as if before a Court of Inquiry, and the Court shall dispose of the case accordingly.

§ 280. The County Court is a Court of Record, and the proceedings shall be recorded as in the Superior Court. Court of Record.

§ 281. The powers of said Court to punish for contempt shall Powers.
be the same as those of the Superior Court; and the general provisions of this Code, from Section 191 to Section 197, inclusive, concerning the powers of a Court, apply to the County Court.

§ 282. In the semi-annual sessions the mode of commencing Rules of practice.
suit, service, and proceedings in general, shall be the same as in the Superior Court, and said County Court shall exercise its jurisdiction under the rules of said Superior Court, unless specially excepted.

§ 283. In all civil cases, not herein excepted, brought to the Summons.
quarter sessions, the plaintiff shall procure from the Court a summons, in which shall be set forth the ground or grounds of complaint and the time of trial, which summons shall be served by the Bailiff or other officer at least five days before the time of trial.

§ 284. Attachments, claims, garnishments, and other like Attach-
ments, etc.
proceedings returnable to the semi-annual sessions, shall be served at least fifteen days before the first day of the session to which the same are returnable; and the same class of cases, returnable to the quarter sessions, shall be served not less than ten days before the first day of the session to which the same are returnable.

§ 285. Immediately after his election and qualification, the Jury box
and Grand
Jury.
Judge and Sheriff shall make out a list of persons from the Receiver's digest who are liable to jury duty, which shall be deposited in a jury-box. At each semi-annual and quarter session the Judge shall draw therefrom not more than eighteen nor less than thirteen Grand Jurors, in the manner pointed out by law for the drawing of Grand Jurors in the Superior Court. They shall be summoned to attend at, and shall serve for, the term next after being drawn, and at any called sessions which may be held previous to the next term, and shall be organized and sworn in the

Article 1.—County Court.

same manner as Grand Jurors in the Superior Court. The proceedings in all respects, so far as applicable to said Court, shall conform to the laws and usages which govern the Superior Court.

Other Jur-
ries. § 286. From the same jury-box, and at the same time, and in the same manner, the Judge shall draw a jury of twelve, who shall also serve for the term next after being drawn, and at any called sessions which may be held previous to the next term; and if from any cause there should be a deficiency of the original panel at the session of said Court, the Judge shall cause to be summoned a sufficient number of *tales* jurors to make up the original panel, for the trial of civil cases, and shall also summon twelve *tales* jurors so as to make up a panel of twenty-four jurors for the trial of criminal cases, from which by strikes, as in the Superior Court, a jury may be selected.

Oath of
Juries. § 287. The jurors serving in the County Court shall take the same oath as is provided for like jurors in the Superior Court, and they shall be paid in the same manner.

Amend-
ments. § 288. The provisions of this Code concerning amendments apply to the County Court at either session.

Defenses. § 289. The provisions of this Court concerning defenses also apply to the County Court at either session.

Time of
trial. § 290. Trials shall be had at the second session after service of process, at the term succeeding that to which such process is returnable, unless on cause shown for continuance; and continuances may be allowed under the same rules as in the Superior Court.

Mode of
trial. § 291. All civil cases before the quarter sessions shall be tried by the Judge, without the intervention of a jury, unless a jury is demanded by one of the parties to the record.

Claims—
how tried. § 292. Claims to personal property in the quarter sessions, where the execution or order issues from said Court, shall be tried in the same manner as in Justice's Court; and in the semi-annual sessions, in the same manner as in the Superior Court.

§ 293. In all cases of attachment returnable to the semi-annual or quarter sessions, the trial and proceedings shall be the same as in the Superior Courts.

Witnesses. § 294. The Judge shall have the power to compel the attendance of witnesses by *subpœna* or otherwise.

Verdicts. § 295. Verdicts or judgments may be so moulded as to subserve the ends of justice, and may be either for a sum certain, for the

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delivery of specific property, for the eviction of an intruder, or the performance of a Court contract, or in such other form as may seem just and proper, and may be in the alternative.

§ 296. Appeals as now taken from the Inferior Court may be taken to the Superior Court (in all cases tried at the semi-annual sessions), and either party in a civil case may in like manner appeal from the judgment rendered at the quarter sessions. Appeals.

§ 297. A *certiorari* may be had upon the application of the party complaining of error to the County Judge, within ten days after the trial, with notice to the opposite party or his attorney, stating the ground of complaint, and giving a brief of the material evidence, upon which it shall be the duty of the Judge to proceed as under a writ of *certiorari*, to certify the proceedings of the County Court to the Judge of the Superior Court within ten days after such application, and the Judge of the Superior Court shall hear and finally determine the same at Chambers, or the session of the Superior Court as may seem proper. Certiorari.

§ 298. In criminal cases a *certiorari* at the instance of the defendant may be had as provided in the preceding Section, and upon notice to the Judge of the application, the sentence shall be suspended until the *certiorari* is decided. On hearing such writ of *certiorari*, the Judge of the Superior Court may either grant a new trial or pass such judgment or sentence as in view of the whole case is consistent with justice. Certiorari in criminal cases.

§ 299. When any case is carried up as provided in the preceding Section, the Solicitor or Attorney General of the Circuit shall take charge of and prosecute the same, for which he shall have the same fees allowed in bills found in the Superior Court.

§ 300. The regulations for sale under execution or order from the County Court for sums exceeding fifty dollars shall be as in the Superior Courts, and for fifty dollars or less as in Justice's Court; and in case of perishable property, the Judge may so order the time of sale as to subserve the ends of justice. Sales.

§ 301. All the proceedings in preferring bills of indictment or presentment, and submitting the same for trial, shall conform to the laws and rules governing in the Superior Court in similar proceedings. Practice in criminal cases.

§ 302. Every indictment in the County Court, either at its semi-annual or quarter sessions, shall be in order for trial at the term at which it is found, but it shall be the duty of the Judge to al- Criminal cases—when tried.

Article 2.—The County Judge.

low reasonable time to both parties to summon witnesses, and to the defendant to procure counsel.

§ 303. If the accused has no counsel, and is unable to employ counsel, it shall be the duty of the Judge to assign counsel to the accused, and to issue *subpœnas* for such witnesses as he may represent to be material for his defense, and if necessary to compel their attendance: *provided*, the Judge may exercise his discretion in compelling the attendance of witnesses whose testimony, in the opinion of the Judge, would be immaterial to the case.

ARTICLE II.

THE COUNTY JUDGE.

SECTION.

- 304. Office—where held.
- 305. Election and official term.
- 306. Vacancy—how filled.
- 307. Commission and oath.
- 308. Qualifications.

SECTION.

- 309. May practice law—when.
- 310. His duties.
- 311. His authority.
- 312. His compensation.
- 313. His fees and costs.

§ 304. The Judge of the County Court shall be entitled the “County Judge,” and shall have his office at the Court House of the County.

§ 305. He shall be elected on the first Wednesday in May, 1866, on the first Wednesday in January, 1870, and every fourth year thereafter, and shall in all cases hold his office until his successor is elected and qualified.

§ 306. Any vacancy in the office of County Judge shall be filled as in case of the Clerk of the Superior Court (as provided in Sections 245 and 246 of this Code), upon fifteen days’ notice.

§ 307. The County Judge shall be commissioned by the Governor, and shall take the oath of office prescribed for Judges of the Superior Court, and no other oath.

§ 308. No disqualification for holding the office of County Judge shall arise from being Clerk of the Inferior Court, or from holding any other office not involving duties incompatible with the duties of the County Judge.

§ 309. The County Judge may, if an attorney at law, practice in cases never connected with his own Court.

§ 310. It shall be the duty of the County Judge—

1. By himself or his clerk, to keep a strict account of all

Article 2.—The County Judge.

finer and forfeitures, out of which he shall pay himself and the officers of said Court, *pro rata*, all costs which have accrued in said Court known as insolvent cost; the remainder, if any, after such payments, and all other moneys, except his costs, which come to his hands as County Judge, or into the hands of his clerk in his official character, he shall pay over to the County Treasurer, and report receipts and disbursements to the Grand Jury of the Superior Court; and if such fines and forfeitures are not sufficient to pay said insolvent costs, the same shall be paid out of the County treasury, or such part as may be inspected and approved by the Grand Jury of the County: *provided*, that no insolvent costs shall be allowed for more than two witnesses to the same material point.

His duties enumerated.

Fines and forfeitures—how disposed of.

2. He shall keep an index of Court contracts, and a list of all certificates and discharges granted by him, which shall be subject to the inspection of any one interested therein.

Shall keep index and list.

3. He shall provide a seal for the County Court, and shall inspect, revise, and pass upon all jail fees arising under his jurisdiction before the same are paid by the Inferior Court.

Court seal—inspection of jail fees.

4. It shall be his duty to have a clerk in office, in case of his own sickness or absence.

Shall have a clerk.

§ 311. The County Judge shall have authority—

1. To issue bail process in civil cases, admit to bail in criminal cases, issue attachments, foreclose mortgages on personal property, issue warrants of distress for rent, issue possessory warrants, writs of *habeas corpus*, and other writs or warrants not within the exclusive jurisdiction of some other Court or officer.

His authority defined.

2. He may attest contracts or deeds for registry, administer oaths, and exercise all the powers of a Justice of the Peace in matters civil and criminal, issue warrants requiring offenders to be brought before him or some other Judge, or some Justice, and sit singly or in conjunction with others, as by law required, on a Court of Inquiry.

May attest contracts, administer oaths and issue warrants

3. He may, at any time, hear and determine the cases of all persons charged with crimes, upon accusations drawn up by the County Solicitor, without a jury; *provided* the person or persons so accused shall, in open Court, declare that he, or she, or they, waive an indictment or presentment by a Grand Jury, and arraignment and trial by a Petit Jury, which declaration shall be entered on the accusation, and also on the minutes of said County Court.

May try criminals without a jury—when.

Article 2.—The County Judge.

4. He shall have power to use the County jail for the detention of accused parties, and for the punishment of those convicted of offenses, or guilty of contempt. Commitments by him shall be lawful warrants to the Jailor and shall be obeyed by him.

May use
County jail.

5. The enumeration in this Section is not exhaustive, but the County Judge may in general exercise all such powers as are essential to the functions granted.

Other
powers.

§ 312. The County Judge shall receive no salary from the State, but shall receive compensation for his services in the way of fees named in the Section next following, which fees shall be taxed in his bill of costs.

Has no sal-
ary.

§ 313. In cases not specially excepted, the Judge's costs in the semi-annual Courts shall be the same as those of the Clerks of the Superior and Inferior Courts for like services. In cases in the quarter and extra sessions if the sum in damages claimed exceed fifty dollars, then two-thirds of such costs, and if not over fifty dollars, then one third of such costs shall be taxed as the Judge's costs; and in all other cases in which he is authorized to act, he shall have such fees as are now allowed by law to other officers for similar services. The Judge's costs in criminal cases shall be two dollars for every case begun, and two dollars additional for every case tried or transmitted to the Superior Court. His costs for a case in which discharge or specific performance is prayed, or other like case not claiming money, shall be two dollars. For the foreclosure of mortgages, the partition of personalty, the removal of intruders, trespassers, or tenants holding over, the trial of claims, for the *certiorari* of any case, forcible entry or detainer, abatement of nuisances, for proceedings usually tried at Chambers, such as possessory warrants, *habeas corpus* cases, and the like, three dollars. He shall receive one dollar for every Court contract which he may approve. In cases in which no fees are prescribed by law, the Ordinary or any three Justices of the Inferior Court may determine what shall be the Judge's costs.

His fees
and costs.

Article 3.—The County Solicitor.

ARTICLE III.

THE COUNTY SOLICITOR.

SECTION.

- 314. His designation.
- 315. Election and commission.
- 316. His qualifications.
- 317. How sworn and removed.

SECTION.

- 318. Solicitor *pro tem*.
- 319. Fees of Solicitor.
- 320. Is collecting officer.

§ 314. There shall also be a prosecuting attorney, who shall be called "County Solicitor."

County Solicitor.

§ 315. The County Solicitor shall be elected at the same time and commissioned in the same manner as the County Judge.

How elected and commissioned.

§ 316. Such County Solicitor shall have been a practicing attorney, and after his election shall reside in the County for which he is elected.

Qualifications.

§ 317. He shall be qualified and sworn as Solicitors and Attorney General are qualified and sworn, except that his oath of office shall be taken before the County Judge or the Justices of the Inferior Court, and shall be removable from office in the same manner as Solicitors General are removable.

How sworn and removed

§ 318. In case of vacancy, absence, sickness, or other disability of the County Solicitor, the Judge may appoint any practicing attorney to perform his duties during such absence, sickness or other disability, or until such vacancy can be filled by a new election.

Solicitor *pro tem*.

§ 319. The County Solicitor shall receive the same fees as are now allowed to the Solicitor General of the Circuit in the Superior Court for such cases as come within the jurisdiction of the County Court.

His fees.

§ 320. He shall be the collecting officer for the County Court, and shall collect all fines, forfeitures, and bonds, and pay the same over to the County Judge, who shall disburse them according to the provisions of Section 310 of this Code.

Is collecting officer.

ARTICLE IV.

CLERK OF THE COUNTY COURT.

SECTION.

- 321. His appointment and removal.
- 322. How paid.
- 323. Record of appointment.

SECTION.

- 324. Oath and powers.
- 325. Shall keep minutes, etc.
- 326. Shall keep dockets.

Article 5.—The Sheriff and the Bailiffs of County Court.

§ 321. The Clerk of the County Court may be either the County Clerk. Judge himself or any person appointed by the Judge, removable at his pleasure.

How paid. § 322. The Clerk shall be paid by the Judge, who is responsible for the good conduct of such Clerk.

Record of appointment § 323. The appointment and removal of the Clerk shall be entered on the minutes.

Oath and powers. § 324. He shall be sworn to the faithful and impartial discharge of his duties, and shall be competent to discharge all of the duties of the Judge not judicial in their character.

Minutes and Records. § 325. The Clerk, or Judge acting as such, shall keep the minutes of the Court, record its proceedings, and issue its orders and processes.

Dockets. § 326. Such Clerk, or Judge acting as such, shall also keep proper dockets—to wit: One Subpœna and one Execution Docket, for all sessions of said Court; for the quarter and extra sessions, one Docket of Civil Cases generally, and also one for Criminal Cases; for the semi-annual sessions, one Common Law Docket, one Docket for Claims, Motions, Illegality, and other like proceedings, and any other docket for either session which the Judge may direct.

ARTICLE V.

THE SHERIFF AND THE BAILIFFS OF COUNTY COURT.

SECTION.

- 327. Sheriff's duty.
- 328. His fees.
- 329. Bailiffs—appointment of.
- 330. Special Bailiff.
- 331. Their bond and oath.

SECTION.

- 332. Special Bailiff's duty.
- 333. Temporary Bailiffs.
- 334. Bailiff's fees.
- 335. Costs—garnishment for.

Duty of Sheriff and deputy. § 327. The Sheriff and his deputies, when required by the County Judge or the Clerk, shall execute any writ, process, or order of the County Court or Judge, as if from the Superior Court, and shall attend the sessions of the County Court.

Sheriff's fees. § 328. For cases in the County Court, within the jurisdiction of the Justice's Court, the Sheriff's fees shall be the same as a Constable's, and in other cases they shall be the same as in the Superior Court. For summoning juries for the semi-annual sessions, five dollars; for the quarter sessions, three dollars.

§ 329. Bailiffs may be appointed by the County Judge, not to

Article 5.—The Sheriff and the Bailiffs of County Court.

exceed four in number, one of whom shall be called Special Bailiffs.
Bailiff.

§ 330. The Special Bailiff shall give bond, as now provided by law, for the faithful discharge of his duties, in the same manner as the Sheriff of the County. He shall have all the power in the execution of the duties of his office as the Sheriff, and be subject to the same pains and penalties. All orders and processes shall be directed to him as well as the Sheriff, and he shall have the same power to sell property under execution or orders issuing from said County Court as the Sheriff has.

Bond, duty,
and liability
of Special
Bailiff.

§ 331. The other Bailiffs shall each give bond in a sum to be fixed by the County Judge, and they and the Special Bailiff shall be sworn to the faithful and impartial discharge of their duties; and the appointment and removal of all Bailiffs shall be entered on the minutes.

Bond of
other Bailiffs

§ 332. It shall be the duty of the Special Bailiff, unless the Judge shall assign the duty to the Sheriff or his deputy, to collect all executions for costs; and in all cases where costs are not paid instanter, executions therefor shall be issued, and ten per cent. additional collected as commissions of the collecting officer.

Duty of
Special Bailiff as
collecting officer.

§ 333. One or more temporary Bailiffs for particular occasions may also be appointed, who need not give bond, but must be sworn and their appointment entered on the minutes.

Temporary
Bailiffs.

§ 334. A Bailiff's fee shall be the same as a Sheriff's, in like cases.

Bailiff's
fees.

§ 335. In cases between master and servant, which shall go against the servant, the judgment for costs, upon written notice to the master, shall operate as a garnishment against him, and he shall retain a sufficient amount for the payment thereof out of any wages due to said servant, or to become due, during the period of service, and may be cited at any time by the collecting officer to make answer thereto.*

Garnish-
ments for
costs in cer-
tain cases.

* For the law as to the County Court and its officers, see Acts of 1865-6, pp. 64-71, and Acts of 1866, pp. 52-54.

Article 1.—The Inferior Court and its Justices.

CHAPTER V.

THE INFERIOR COURT: ITS JUSTICES AND CLERKS.

ARTICLE 1.—*The Inferior Court and its Justices.*

ARTICLE 2.—*The Clerk.*

ARTICLE I.

THE INFERIOR COURT AND ITS JUSTICES.

SECTION.

- 336. Election, oath, and official term.
- 337. Vacancies—how filled.
- 338. Vacancies need not be filled—when.
- 339. Persons elected to fill vacancies.
- 340. Persons eligible.
- 341. Number necessary to hold Court.

SECTION.

- 342. When Justices are equally divided.
- 343. Their disability, privilege, etc.
- 344. When a majority are interested.
- 345. May punish contempts.
- 346. In relation to County property, etc.
- 347. Other powers and duties of Court.

Number,
election, of-
ficial term,
and oath of
Justices.

§ 336. The presiding officers of the Inferior Court consist of five persons, styled the “Justices of the Inferior Court,” who are elected by the people of their respective Counties at the times and in the manner hereinafter prescribed, and who hold their offices for four years, unless sooner removed in the manner prescribed by the Constitution. Before entering upon the duties of their office, they must take the oath required of all civil officers, and in addition the oath taken by the Judges of the Superior Courts.

Vacancies
—how filled.

§ 337. When a vacancy occurs, any two or more of said Justices, and one, if only one in the County qualifies, and if not one, then the Ordinary of the County shall order an election as prescribed in the case of a vacancy in the Clerkship of the Superior Court.

No special
election—
when.

§ 338. If there are as many as three of said Justices in com- mission and in the discharge of their duties, and the vacancy takes place not exceeding eight months prior to the next regular election for such Justices, there must not be any special election.

Those
elected to fill
vacancies.

§ 339. The persons elected to fill the vacancy are commissioned for the unexpired terms of the outgoing Justices, and hold their offices accordingly.

Who are eli-
gible.

§ 340. No person is eligible to such Justiceship unless he has been a resident citizen in the County in which he is to preside for

Article 1.—The Inferior Court and its Justices.

at least one year next preceding his qualification. Persons elected Justices of such Court can not practice law therein, directly nor indirectly. Can not practice law

§ 341. Not less than three of such Justices can hold a Court, and when three preside it requires the concurrence of two to make a judgment. When more than three preside there must be a concurrence of three. What number may hold Court.

§ 342. When four of said Justices preside and are equally divided in their opinions, the question or case on which it arises must be postponed until the fifth Justice can preside, or until the next term of the Court. When equally divided in opinion the case stands over.

§ 343. They are disqualified from holding any other County office, but are eligible as members of the General Assembly, to military offices, and are exempt from jury, militia, and patrol duty. Disability, privileges and exemptions.

§ 344. Suits can not be entertained by such Justices where a majority of their number are interested, and in such, and in all cases where such majority are disqualified, suits must be brought in the Superior Court; but if brought before said Justices they do not abate, and there may be an appeal to the Superior Court, as in other cases. Cases go to Superior Court—when

§ 345. The Inferior Courts have authority—

To punish for contempt by fines not exceeding fifty dollars, or imprisonment not exceeding five days. May punish contempts.

§ 346. To exercise original and exclusive jurisdiction, when sitting for County purposes, over the following subject-matters—viz: Exclusive jurisdiction.

1. In directing and controlling all the property of the County as they may deem expedient according to law. As to County property.

2. In levying a general tax for general, and a special tax for particular, County purposes, according to the provisions of this Code. As to County taxes.

3. In establishing, altering, or abolishing all roads, bridges, and ferries, in conformity to law. As to roads, bridges, and ferries.

4. In establishing and changing election precincts and militia districts. As to changing election precincts.

5. In supplying by appointment all vacancies in County offices, and in ordering elections to fill them. As to vacancies in County offices.

6. In examining, settling, and allowing all claims against the County. As to claims against the County.

7. In examining and auditing the accounts of all officers hav- As to ac-

Article 1.—The Inferior Court and its Justices.

counts of ing the care, management, keeping, collection, or disbursement of
financial money belonging to the County, or appropriated for its use and
County offi- cers. benefit, and in bringing them to a settlement.

8. In making such rules and regulations for the support of the
As to the poor of the County, for County police and patrol, for the promo-
County poor. tion of health and quarantine, as are granted by law, or not in-
consistent therewith.

9. In regulating peddling and fixing the costs of license
As to ped- therefor.
dling.

Authority— § 347. The Justices of the Inferior Court have authority—

To appoint 1. [To appoint some fit and proper person to open and adjourn
person to their Court, in the absence of an officer to do so.] (a)
open and ad-
journ Court.

2. To sit at any time as a Court for County purposes, and for
May sit at the exercise of any power they possess as Justices, as a *quasi*
any time for County pur- corporation, contradistinguished from their power as a Court.
poses.

3. To appoint any person to discharge any trust authorized by
May ap- their powers, where no other person is designated by law, and to
pointagents. regulate his compensation, and to take bond and security.

4. To attest deeds and other written instruments for register.
Attest
deeds.

5. To approve of all official bonds required of them by law and
Approve sent them by the Governor with the *dedimus*, to qualify such offi-
officialbonds cers and to deliver them their commissions.

6. To act as members of the Board of Education of their re-
May act as Board of Ed-
ucation. spective Counties.

7. To exercise such other powers as are granted by law, or are
Other pow- indispensable to their jurisdiction.
ers.

ARTICLE II.

THE CLERKS OF THE INFERIOR COURTS.

SECTION.

- 348. Election, qualification, etc.
- 349. Vacancies—how filled.
- 350. Oath, bond, etc.

SECTION.

- 351. May appoint a deputy.
- 352. Duties enumerated.
- 353. His compensation in certain cases.

§ 348. The Clerks of the Inferior Courts are elected, qualified,
Election commissioned, hold their offices, and are removed as the Clerks of
and term of the Superior Courts are.
office.

(a) Acts of 1861, p. 56.

Article 2.—The Clerks of the Inferior Courts.

§ 349. Vacancies are supplied as they are in the offices of the Clerks of the Superior Courts, except that the Justices of the Inferior Courts appoint in the particular cases where the Judges of the Superior Court appoint; and where the contingency happens mentioned in Section 250, the duties devolve upon the Clerks of the Superior Courts, if any, and if none, then as provided for in said Section. Vacancies
—how filled.

§ 350. The Clerks of the Inferior Courts take the same oaths and give the same bond as the Clerks of the Superior Courts, and are removable in the same manner. Oath, bond,
etc.

§ 351. They may appoint deputies and require bonds of them, and are otherwise under the same disabilities; are subject to the same rules and regulations, and must perform the same duties as the Clerks of the Superior Courts do for their Courts, whenever applicable to the Inferior Court and there is no provision to the contrary. May appoint
deputy.

§ 352. In addition, it is their duty—

1. To attend all sessions of said Court, and all sessions of said Justices on County business, and keep fair and regular minutes of their proceedings. Duties of
Clerk—
To attend
Court.

2. Upon the request of any one of them, to notify the Justices of the Inferior Court of the time and cause of every special session. Give notice of special
sessions.

3. To keep all the dockets, books, indexes, and files required by law for the use of said Court. Keep dock-
ets and other
books.

4. To keep a well-bound book in which must be entered a copy of the bonds of County officers. To keep
books of of-
ficial bonds.

5. To keep other books, in which must be kept the records of all Constables' bonds, and in the other the oaths and bonds of all persons who obtain permission to sell spirituous liquors. Book of
Constables
and retailers'
bonds and
oaths.

6. To keep a book for entering marks, brands, and estrays, and a book for the registry of the names, descriptions, and oaths of licensed peddlers. To keep
the book of
marks and
brands.

7. To enter on the minutes the items of all accounts allowed by the Justices of the Inferior Court, as well as the order for their payment. To enter
all accounts
allowed.

8. To keep a book in which shall be entered all sums received by them on account of the County and paid to the Treasurer, and for what special fund, if any. To keep ac-
count of mo-
ney received
and paid out

9. To transmit to the Clerk of the Superior Courts all *certio-*

Article 1.—The Ordinaries and their Courts.

To trans-
mit appeals. *rari*, and other papers of which the Superior Court obtains juris-
diction.

Other du-
ties. 10. To perform such other duties as are or may be required of
them by law, or as are indispensable to those required.

Compensa-
tion for cer-
tain services § 353. For the services they are required to perform for the
Justices of the Inferior Court on account of their Counties, for
which no fees are specially provided, they shall receive an annual
salary, to be fixed by such Justices at the close of each year, to
be regulated by the services performed and the means of the
County, which shall be not less than fifty nor more than two hun-
dred dollars.

CHAPTER VI.

ORDINARIES.

ARTICLE 1.—*The Ordinaries and their Courts.*

ARTICLE 2.—*The Ordinaries as Clerks.*

ARTICLE 3.—*The Ordinaries as School Commissioners, etc.*

ARTICLE I.

THE ORDINARIES AND THEIR COURTS.

SECTION.

- 354. Name and style of the Ordinary.
- 355. His election and term of office.
- 356. His oath of office.
- 357. His bond.
- 358. Vacancies—how filled.
- 359. Ordinaries elected to fill vacancies.
- 360. Must complete unfinished business.
- 361. When Ordinary is disqualified.
- 362. Eligibility and disability.
- 363. His trust as executor, adm'r, etc.

SECTION.

- 364. Who takes administration.
- 365. Where Ordinary's office must be kept.
- 366. Jurisdiction and powers of his Court.
- 367. May punish for contempt, etc.
- 368. May grant administration—when.
- 369. Administration in certain cases.
- 370. Must report estates unrepresented.
- 371. Failing to account as executors, etc.
- 372. Can not practice law in his own Court
- 373. May administer oaths.

Name and
style of Or-
dinary and
his Court. § 354. The Court established pursuant to the amended Consti-
tution, approved the second time December 5th, 1851, has the
name and style of the Court of Ordinary, and the incumbent
thereof has the name and style of the Ordinary.

Election
and term of
office. § 355. The Ordinaries are elected by the people of their respect-
ive Counties, at the time and in the manner hereinafter prescribed,
who hold their offices for four years, unless sooner removed in the
manner prescribed by law.

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§ 356. Before entering on the duties of their offices, they must take and file the oaths required of all civil officers, and in addition the following oath: Oath.

“I do swear that I will well and faithfully discharge the duties of Ordinary for the County of ———, during my continuance in office, according to law, to the best of my knowledge and ability, without favor or affection to any party, and that I will only receive my legal fees. So help me God.”

§ 357. They must also give bond and surety, in the sum of one thousand dollars, for the faithful discharge of their duties as Clerks of the Ordinary. Bond.

§ 358. When a vacancy occurs in the Ordinary there shall be an election to supply the same, ordered by the Justices of the Inferior Court, in the same manner as for Clerk of the Superior Court, and until the same is filled, the Clerk of the Superior Court shall perform all the duties which the Ordinary could perform as Clerk, and no more. Vacancy—
how filled.

§ 359. The person elected to supply the vacancy must be commissioned for the unexpired term, unless it does not exceed three months from the time the election can be ordered and held; if so, there must not be any special election. Term of
Ordinary
elected to fill
vacancy.

§ 360. All citations and other unfinished proceedings of the former Ordinary must be disposed of by the successor as though there had been no vacancy. Citations,
etc.— how
disposed of
by successor

§ 361. When the Ordinary is disqualified, the proceedings shall be carried as though by consent of parties, by appeal, to the Superior Court; and in the meantime temporary letters shall issue, or other legal means used, if necessary, to preserve the estate. Proceed-
ings when
Ordinary is
disqualified.

§ 362. The eligibility and disabilities of the Ordinary, aside from the Constitution, are the same as the Clerks of the Superior Courts for their offices, with the addition that they can not, during their terms of office, be executors, administrators, or guardians, or other agent of a fiduciary nature required to account to their Courts; but they may be administrators, guardians, or executors, in cases where the jurisdiction belongs to another County, or where, in special cases, they may be allowed by law and required to account to the Ordinary of another County. Eligibility
and disabili-
ty of Ordina-
ry.

§ 363. When any persons holding such trusts are elected Ordinaries, their letters and powers (immediately) abate on their qualification. His trust
as executor,
etc., abates
on his elec-
tion.

Article 1.—The Ordinaries and their Courts.

§ 364. When the Ordinary is also the Clerk of the Superior Court, and there is no public administrator, or other person upon whom the law casts the administration of unrepresented estates, such administrations are cast upon the Clerks of Inferior Courts, unless they too are Ordinaries; in which last event the Sheriffs of the several Counties must become such administrators.

Who takes administration when the Ordinary is Clerk of Superior Court.

§ 365. The Ordinaries must keep their offices at the place and in the manner prescribed for Clerks of the Superior Courts, and must hold their Courts at the place prescribed for the Superior Courts, or in their offices.

Where his office must be kept.

§ 366. Courts of Ordinary have authority to exercise original, exclusive, and general jurisdiction of the following subjects-matter:

Jurisdiction and power of Courts of Ordinary.

1. Probate of wills.
2. The granting of letters testamentary, of administration, and the repeal or revocation of the same.
3. Of all controversies in relation to the right of executorship or administration.
4. The sale and disposition of the real property belonging to, and the distribution of, deceased persons' estates.
5. The appointment and removal of guardians for minors and persons of unsound mind.
6. All controversies as to the right of guardianship.
7. The auditing and passing returns of all executors, administrators, and guardians.
8. The discharge of former, and the requiring of new surety, from administrators and guardians.
9. The issuing commissions of lunacy in conformity to law.
10. Of all such other matters and things as appertain or relate to estates of deceased persons, and to idiots, lunatics, and insane persons.
11. Of all such matters as may be conferred on them by the Constitution and laws.
12. [And concurrent jurisdiction with the County Judge in the binding out of orphans and apprentices, and all controversies between master and apprentice.] (a)

§ 367. Such Courts may issue rules and attachments for contempt offered the Court, or its process, by any executor, administrator, guardian, or other person, and may punish the same by

May punish for contempt and enforce obedience to all orders.

Article 1.—The Ordinaries and their Courts.

a fine as high as fifty dollars, or imprisonment not exceeding five days (one or both).

§ 368. The Ordinary can grant administration upon no person's estate who was not a resident of the County where the application is made at the time of his death, or, being a non-resident of the State, has property in said County, or a *bona fide* cause of action against some person therein.

In what cases Ordinary may grant administration

§ 369. When such non-resident deceased persons have such property or such cause of action in more than one County, such letters may be granted in either County, and the Ordinary first granting them acquires exclusive jurisdiction.

In what County administration may be granted.

§ 370. Such Ordinaries shall at each term of the Superior Courts of their respective Counties report to the presiding Judge the estates in their hands unrepresented, together with their condition.

Must report estates unrepresented.

§ 371. If any Ordinary fails faithfully to account as executor, administrator, or guardian, after becoming such Ordinary, which trusts he held at the time of his election, he is ineligible to a re-election.

Failing to account as executor, etc. makes him ineligible to re-election.

§ 372. No Ordinary shall engage, directly or indirectly, in the practice of law in his own or in the name of another, as a partner, open or silent, or otherwise, in any cause or proceeding in his own Court, or in another Court of which his own Court has, or has had, or may have, jurisdiction.

Can not practice law in his own Court.

§ 373. [The several Ordinaries of this State are authorized to administer oaths in all cases where the authority is not specially delegated to some other officer, and receive the same fees therefor as are allowed Justices of the Peace.] (a)

May administer oaths.

ARTICLE II.

THE ORDINARIES AS CLERKS.

SECTION.

374. Ordinaries may appoint clerks.

375. Powers of such clerks.

SECTION.

376. The Ordinary may require bond, etc.

377. Special duties of the clerk.

§ 374. The Ordinaries are, by virtue of their offices, Clerks of their own Courts, but they may, at their own expense, appoint one or more clerks, for whose conduct they are responsible, who hold their offices at the pleasure of such Ordinary.

Ordinaries are Clerks of their own Courts.

Article 2.—The Ordinaries as Clerks.

Powers of
Clerk.

§ 375. Such appointed clerks may do all acts the Ordinaries could do, not judicial in their nature.

May give
bond.

§ 376. When clerks are thus appointed, before entering on the duties of their offices, they may give to the Ordinary a bond and security in the sum of one thousand dollars.

The duties
of the Clerk
of the Court
of Ordinary.

§ 377. It is the duty of such clerks, or the Ordinaries acting as such—

1. To issue all citations required by law.
2. To grant temporary letters of administration.
3. To grant marriage licenses.
4. To issue all *fi. fas.* for costs on all judgments of the Ordinary or other process necessary to enforce them.
5. To issue subpoenas for witnesses, and all similar process for ripening a trial.
6. To issue any paper or process by order of the Ordinary, and bearing test in his name as other Clerks.
7. To keep fair and regular minutes of each session of the Court, entered in a well-bound book, and such other services during term time as the Ordinaries may require.
8. To keep in their offices other suitable books for the following purposes—viz:

Books to
be kept in
the office of
the Ordinary

A book for the record of wills.

Another for the record of all letters of administration and guardianship.

Another for the record of all bonds given by administrators and guardians.

Another for the record of all appraisements, inventories, and schedules.

Another for the record of all accounts of sales.

Another for the record of all accounts current authorized to be made to the Ordinary, together with the vouchers accompanying the same.

Another for the record of all marriage licenses, and the returns thereon.

Another as a docket in which to enter all applications and other proceedings, in the order they are made, and which shall be called in like order at each session.

Another for the record of all official bonds required to be recorded in the Ordinary's office.

9. To procure and preserve, for public inspection, a complete

Article 3.—The Ordinaries as School Commissioners.

file of all newspapers in which their advertisements appear, as the Clerks of the Superior Court are required.

10. To keep their books and papers arranged, filed, and labeled and indexed as said Clerks are required.

11. To give transcripts likewise as they are required, and when the Ordinary and the Clerk are the same person, so to state in the certificates.

12. To perform any other duty required of them by law, or which is indispensable to those required.

ARTICLE III.

THE ORDINARIES AS SCHOOL COMMISSIONERS.

SECTION.

378. Ordinaries are School Commissioners
379. Shall give additional bond.

SECTION.

380. Special duties of the Ordinary.

§ 378. The Ordinaries are, by virtue of their offices, School Commissioners, members of the Board of Education, and treasurers thereof for their respective Counties. Ordinaries are School Commissioners, etc.

§ 379. Before entering on the duties of their offices, in addition to the oath and bond already prescribed, they shall take an oath "faithfully to discharge all the duties imposed upon them as such, and to faithfully apply and account for all money coming to their hands in said capacity," and shall also give bond and surety, payable to and approved by, the Justices of the Inferior Court, in double the sum of the whole School Fund arising from all sources, conditioned for the faithful discharge of their duties and application of, and accounting for, said fund for the purposes and in the manner prescribed by law, as treasurer of said Board of Education, which oath and bond shall be entered, filed, and recorded as his other oaths and bonds are. Oath and bond as such

§ 380. It is their duty in said capacities—

1. To enter yearly, as soon as received, in a book to be kept for that purpose, the names of all children entitled to the benefit of the School Fund. Special duties of the Ordinary, etc.

2. To attend the sessions of the Board of Education, and once in each year to report to them the condition of the funds in their hands, the amounts due teachers, the probable revenues and necessities for the current year. Must attend meetings of the Board of Education.

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3. To lay said reports before the first Grand Juries of their respective Counties at the first session thereafter, and to each successive Grand Jury until action is had thereon, together with the action of said Board of Education, and specially to inform said jury of the number of children entitled to the benefit of the School Fund, and the amount of funds on hand after paying teachers for the previous years, aside from what may be raised from County taxation.

4. To keep full and fair accounts of all his receipts and disbursements in a well-bound book kept for that purpose, showing the different amounts received, when received and from what source, to whom and when paid and for what purpose; which shall be laid before the Grand Jury for their inspection whenever they require it.

5. To pay teachers of such children and any other charge on such fund, in the manner prescribed by law and said Board of Education, taking and filing proper vouchers for the same.

6. To keep, by themselves or their clerks (if any), the minutes of said Board of Education in a book to be kept for that purpose, which shall be deposited in their offices for public inspection.

7. To issue, in such capacity, any order or process such Board may require.

CHAPTER VII.

SHERIFFS AND THEIR DEPUTIES.

SECTION.

- 381. Sheriffs—how elected.
- 382. A surety for Tax Collector.
- 383. Vacancies in the office of Sheriff.
- 384. His oath of office.
- 385. Must give bond.
- 386. Bond to be examined.
- 387. His bond—where recorded.
- 388. Judge of the Court may examine.
- 389. When a Sheriff is succeeded.
- 390. Sheriff's office—where to be kept.
- 391. May appoint deputies.

SECTION.

- 392. The Sheriff is Jailor.
- 393. Jailors must take an oath.
- 394. Bond and oath must be recorded.
- 395. Jailors bound to receive prisoners.
- 396. Sheriff liable for acts of deputy.
- 397. Sheriff's duty in executing orders.
- 398. His book of entries when filled.
- 399. Can not purchase at his own sale.
- 400. When allowed fees.
- 401. Defaulting Sheriffs.

§ 381. The Sheriffs are elected, qualified, commissioned, hold their offices for the same term, and are subject to the same disabilities as the Clerks of the Superior Courts.

§ 382. A security for any Tax Collector or other holder of

Chapter 7.—Sheriffs and their Deputies.

public money is ineligible to the office of Sheriff, until all moneys for which he is bound shall have been paid to the proper authority. Disqualifications.

§ 383. Vacancies are filled and the after proceedings are as in case of vacancies in Clerks of the Superior Courts, except that in case there is a failure to appoint, as set forth in Section 248, the Coroner of the County shall act as Sheriff, and if there is no Coroner the Ordinary shall make a temporary appointment, and on failure of both, the Sheriff of any adjoining County is authorized to act as Sheriff until the Justices of the Inferior Court shall make their appointment or there is an election. Vacancies—how filled.

§ 384. Before entering on the duties of their office they shall take and subscribe, besides the oath of all the civil officers, the following oath, before the Judge of the Superior Court or Justices of the Inferior Court—viz: “I do swear that I will faithfully execute all writs, warrants, precepts, and process directed to me as Sheriff of this County, or which are directed to all Sheriffs of this State, or to any other Sheriff specially, I can lawfully execute, and true returns make, and in all things well and truly and without malice or partiality, perform the duties of the office of Sheriff of ——— County, during my continuance therein, and take only my lawful fees. So help me God.” His oath of office.

§ 385. They shall also give a bond, with at least two sureties, in the sum of [ten] (a) thousand dollars (unless changed to a less or greater amount by local acts now in force or hereafter to be enacted), conditioned for the faithful performance of their duties as Sheriffs, by themselves, their deputies, and their jailors, and upon the terms required by law. Must give bond.

§ 386. Such bonds shall be approved by three Justices of the Inferior Court of the County, and then deposited in the office of the Clerk of the Superior Court until the first session of that Court thereafter, when the presiding Judge shall examine said bonds, and if taken in conformity to the law, and the sureties are sufficient, so declare by order, and have them spread upon the minutes of the Court; and if it has not been so taken they shall give another bond, which said Judge is authorized to take and have entered on said minutes. His bond—by whom to be examined and approved.

§ 387. When said bonds are thus approved by the Justices of the Inferior Court, and before deposited in said office, they shall be recorded in the office of the Clerk of the Inferior Court, and Such bond to be recorded and deposited.

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after being passed upon by the Judge of the Superior Court, shall be returned to the office of said Clerk of the Inferior Court and by him filed; and if the Judge of the Superior Court compels said Sheriff to give a new bond, after having been approved and entered on the minutes, it shall be filed in the office of the Clerk of the Inferior Court and be recorded therein without further approval.

§ 388. If a term of the Superior Court is held in the County before the Justices of the Inferior Court shall have approved the Sheriff's bond, the Judge of the Superior Court may do so in the first instance, being careful to take the opinion of such Justices, or a part of them, or the Ordinary, as to the solvency and sufficiency of the sureties, and, having so approved, the other proceedings are as hereinafter set forth.

§ 389. When a Sheriff's deputy is the succeeding Sheriff, the sureties must be essentially different from those on such Sheriff's bond.

§ 390. Sheriffs must keep their offices at the same place and on the same terms as Clerks of the Superior Court are required.

§ 391. They are authorized, in their discretion, to appoint one or more deputies, from whom they must take a bond with sureties.

§ 392. They are, by virtue of their offices, Jailors of the Counties, and have the appointment of Jailors, subject to the supervision of the Inferior Court, as prescribed in this Code.

§ 393. Before entering on the duties of their office, such Jailors must give to the Sheriff bond and surety for the sum of one thousand dollars, conditioned for the faithful performance of their duties as Jailors, and shall take and subscribe before some one of the Justices of the Inferior Court of the County the following oath—viz: "I do swear that I will well and truly do and perform, all and singular, the duties of Jailor for the County of ———, and that I will humanely treat prisoners who may be brought to the jail of which I am keeper, and not suffer them to escape by any negligence or inattention of mine. So help me God."

§ 394. Such bond and oath must be filed and recorded as those of a Sheriff's deputy.

§ 395. It shall be the duty of the keepers of the several jails within this State to receive into their respective jails, and safely keep therein, all prisoners committed under the authority of the United States, under the like penalties and subject to the same

Judge of Superior Court may examine said bond in the first instance in certain cases.

When a Sheriff is succeeded by his deputy.

Sheriff's office.

May appoint a deputy.

May appoint Jailors

Jailors must take an oath and give bond.

Form of his oath.

Bond and oath recorded and filed.

Shall keep persons committed under authority of U. States.

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action as in the case of prisoners committed under the authority of this State.

§ 396. Sheriffs are liable for the misconduct of the Jailor as they are liable for their deputies, and persons injured by the Jailor have the same option in suing the Jailor's bond that they have in suing the deputy's bond. Sheriffs liable for the misconduct of deputies and Jailors.

§ 397. It is the duty of the Sheriff—

1. To execute and return the process and orders of the Courts of Record of this State, and of officers of competent authority, if not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code. His duty in executing and entering process, orders, etc.

2. To attend upon all sessions, by themselves or deputies, of the Superior and Inferior Courts of the County, [and of the County Court, when required by the Judge thereof,] (a) and of the Court of Ordinary, whenever required by the Ordinary, and never to leave said Courts while in session, without the presence of one or both of said officers if required, and to attend in like manner at the place of holding an election at the County site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under officers present as a police to preserve order. In attending upon the Courts. In attending elections

3. To publish sales, citations, and other proceedings, as required by law, and to keep a file of all newspapers in which their official advertisements appear, in the manner required of Clerks of the Superior Courts. Shall publish sales, citations, etc.

4. To keep an Execution Docket, wherein they must enter a full description of all executions delivered to them, the dates of their delivery, together with all their acts and doings thereon, and have the same ready for use in any Court of their County. Keep an Execution Docket.

5. To keep a book, in which shall be entered a record of all sales made by process of Court, or by agreement of parties, under the sanction of Court, describing accurately the property and process under which sold, the date of the levy and sale, the purchaser, and price. A record of sales.

6. To receive from the preceding Sheriff all unexecuted writs and process, and to proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his sales, when not done by him. Shall receive and complete unfinished business of predecessor.

(a) Acts of 1865-6, p. 66.

Chapter 7.—Sheriffs and their Deputies.

7. To take from preceding Sheriffs custody of the jail and the bodies of such persons as are confined therein, with the precept, writ, or cause of detention.

Shall receive jails, prisons, etc., from predecessor.

8. To furnish prisoners with medical aid, fire, and blankets, to be reimbursed, if necessary, from the County treasury, and to suffer a penalty for neglect as prescribed in this Code.

Shall furnish prisoners medical aid, fire, blankets, etc.

9. To take all prisoners arrested, or in execution under any criminal or civil process, to the jail of an adjoining County, or to the jail of some other County when more accessible, if the jail of the County is in an unsafe condition, under such rules as are prescribed in this Code.

Take prisoners to jail of adjoining County in certain cases

10. To perform such other duties as are or may be imposed by law, or which necessarily appertain to their offices.

His books when filled must be deposited.

§ 398. All books the Sheriffs are required to keep, after becoming full, must be deposited in the office of the Clerks of the Superior Courts, to be kept as their other books of record.

Can not purchase at his own sale.

§ 399. No Sheriff or deputy, or other officer discharging a similar duty, will be permitted to purchase any property whatever at his own sale, upon his own bid, nor upon the bid of any other person for him, directly or indirectly; and all such sales and deeds in pursuance thereof, intended to vest in such officer the title to property so purchased, shall be null and void.

When allowed fees and amount thereof.

§ 400. Sheriffs are only entitled to such fees or compensation as the law prescribes, or, upon an omission of the law, to such reasonable compensation as the Court shall award; and where they use property themselves, or hire it out after being levied upon, they are not allowed a *per diem* allowance for diet, and are liable to the proper party for the hire received.

Defaulting Sheriffs fined for contempt.

§ 401. If any Sheriff or deputy fails to comply with the provisions of Section 397, he shall be fined for a contempt, as the Clerk of the Superior Court is in similar cases. Section 261 also applies to Sheriffs.

CHAPTER VIII.

STATE'S ATTORNEYS AND ATTORNEYS AT LAW.

ARTICLE 1.—*Attorney General.*

ARTICLE 2.—*Solicitors General.*

ARTICLE 3.—*Attorneys at Law.*

Article 1.—Attorney General.

ARTICLE I.

ATTORNEY GENERAL.

SECTION.

402. The Attorney General.
 403. Must give bond and surety.
 404. His duties enumerated.

SECTION.

405. May render service out of Circuit.
 406. May render service anywhere.

§ 402. The Solicitor General of the Circuit which embraces the seat of Government is, by virtue of his office, the Attorney General of the State. Attorney General.

§ 403. Before entering on the duties of his office he must give bond and surety, satisfactory to the Governor, in the sum of ten thousand dollars, and upon his requisition must give additional bond whenever the public interest demands. Must give bond and security.

§ 404. It is the duty of the Attorney General—

1. To give his opinion in writing, or otherwise, on any question of law connected with the interests of the State, or with the duties of any of the Departments, when required by the Governor or either of the State House officers. Must give his written opinion.

2. To prepare all contracts and writings in relation to any matter in which the State is interested when requested. Prepare contracts when the State is interested.

3. To attend, on the part of the State, to all criminal causes in any of the Circuits, when the Solicitor General thereof is prosecuted, and to all other criminal or civil causes to which the State is a party, when ordered by the Governor. Attend on the part of the State to civil and criminal cases.

4. To perform such other duties as are or may be required of him, or which necessarily appertain to his office. His general duty.

§ 405. When the services of such Attorney General shall be needed in either of the Judicial Circuits the presiding Judge thereof shall notify the Governor twenty days before of the time, place, and cause, and the Governor may (in his discretion) order the Attorney General to comply, unless the law in the case presented makes it his imperative duty to do so. May be required to attend out of his Circuit.

§ 406. It is in the discretion of the Comptroller General to require the Attorney General, when the services of a Solicitor General are necessary, in collecting or securing any claim of the State, in any part of the State, either to command the services of said Attorney General in any or all of such cases, or of the Solicitors General in their respective Circuits. The services of Attorney General may be required out of his Circuit by Comptroller General.

Article 2.—Solicitors General.

ARTICLE II.

SOLICITORS GENERAL.

SECTION.

- 407. Solicitor General.
- 408. His oath.
- 409. Vacancy—how filled.
- 410. His qualifications.
- 411. On the same footing as the Judge.
- 412. His special duties enumerated.
- 413. May be ruled as attorneys.
- 414. Failing to attend Court.

SECTION.

- 415. May *not*, *pros.* indictments.
- 416. Penalty for exacting illegal costs.
- 417. Who must certify such proceedings.
- 418. Tampering with Grand Jury.
- 419. May be appointed by the Court.
- 420. An attorney so appointed.
- 421. Charges against Solicitor General.

His elec-
tion and
term of of-
fice.

§ 407. Each Superior Court Judicial Circuit must have a Solicitor General, elected by the people thereof respectively, who holds his office four years, unless sooner removed in the manner prescribed by the Constitution.

His oath.

§ 408. Before entering on the duties of their offices, beside the oaths required of all civil officers, they must, in addition, take the following—viz :

“I do swear that I will faithfully and impartially, and without fear, favor, or affection, discharge my duties as Solicitor General, and will take only my lawful fees of office. So help me God.”

And must also give such bond and surety as is required of the Solicitor who, by virtue of his office, is Attorney General.

Vacancy—
how filled.

§ 409. Vacancies occur and are filled as prescribed in cases of the Judges of the Superior Courts, and the manner of proceeding is in every respect the same, except that the person elected to fill the vacancy holds his office only for the unexpired term, and must be so commissioned.

His quali-
fications.

§ 410. No person is eligible to the office of Solicitor General who has not been a resident citizen of this State five years just preceding his election or appointment, [and who does not permanently reside in the Circuit at the time of his election or appointment,] (a) and who has not attained the age of twenty-one years, and who has not been duly admitted and licensed to practice law in the Superior Courts of this State for at least three years.

On the
same footing
as Judge as
to retaining
his Circuit.

§ 411. A person having been appointed or elected a Solicitor for any Circuit is on the same footing of a Judge of the Superior Court, as set forth in Section 230 (as to retaining his office).

§ 412. Their duties within their respective Circuits are—

(a) Acts of 1865-6, p. 22.

Article 2.—Solicitors General.

1. To attend each session of the Superior Courts, regular or adjourned, unless excused by the Judge thereof, and remain until the business of the State is disposed of. Must attend the Superior Courts

2. To attend on the Grand Juries, advise them in relation to matters of law, and swear and examine witnesses before them. Must attend Grand Jury.

3. To administer the oaths the laws require to the Grand and Petit Jurors, to the Bailiffs, or other officers of Court, and otherwise to aid the presiding Judge in organizing the Courts as he may require. Must administer oaths.

4. To draw up all indictments or presentments, when requested by the Grand Jury, and to prosecute all indictable offenses. Draw up indictments and presentments.

5. To prosecute or defend any civil action in the prosecution or defense of which the State is interested, unless otherwise specially provided for. Must prosecute or defend when the State is interested.

6. To attend before the Supreme Court when any criminal cause is tried emanating from their respective Circuits, argue the same, and perform any other duty therein the interest of the State may require. Must attend Supreme Court

7. To collect all moneys arising from fines and forfeited recognizances, all costs on criminal cases when paid into Court before judgment, and not otherwise; and at the Fall Term of each Court, every year, to settle with the County Treasurer, and pay over to him all moneys due him according to law, after a fair and full settlement. Must collect fines and forfeitures and settle with the County Treasurer.

8. To settle at the same time with the preceding Solicitor, and pay over to him any moneys collected to which he may be entitled, and to render to him, whenever required by him, a just statement of the condition of his interests. Must settle with the preceding Solicitor.

9. To collect all moneys due the State in the hands of any escheators, and pay over to the Educational Fund; and, if necessary, compel them to pay by rule or order of Court, or other legal means. Must collect all money due the State in the hands of escheators.

10. To collect all claims of the State they may be ordered to do by the Comptroller General, and to remit the same within thirty days after collection; and on the first day in October every year to report to him the condition of the claims in their hands in favor of the State, particularly specifying the amounts collected and paid, from what sources received and for what purposes; to whom paid, what claims are unpaid, and why; what judgments have been obtained, when, and in what Court; what Must collect claims due the State when ordered by the Comptroller General.

Article 2.—Solicitors General.

suits are instituted, in what Courts, and their present progress and future prospects.

11. To perform such other duties as are or may be required by law, or which necessarily appertain to their office.

His gen-
eral duties.

§ 413. If a Solicitor General fails to comply with the provisions of the preceding Section, he is liable to rule as attorneys at law are, with all the penalties and remedies; and on failure to comply with the terms of a rule absolute, within twenty days from the time it becomes final, it shall be a ground of impeachment.

May be ruled
as attorneys
at law.

§ 414. If he fails to attend on the Courts of his Circuit as required, he is liable to be fined for each failure fifty dollars, to be retained out of his salary.

Failing to
attend Court
—liable to be
fined.

§ 415. He has authority, on the terms prescribed by law, to enter a *nolle prosequi* on indictments; and if, in any cases, a Solicitor General accepts, directly or indirectly, in money or other valuable thing, or exacts more than his lawful costs from the defendant or any body else, it is a subject-matter of investigation by the Grand Jury.

May *nolle
pros.* indict-
ments, etc.

Penalty for
exacting il-
legal costs.

§ 416. If the Grand Jury presents the Solicitor for having so received more than his lawful costs, he shall be disqualified from further discharging his official duties until a trial shall be had upon an indictment, and if the trial results in a conviction, he shall be fined and imprisoned at the discretion of the Court, and it is also a ground of impeachment. The disqualification continues until the adjournment of the next session of the General Assembly.

How pro-
ceeded a-
gainst for
exacting il-
legal costs.

Penalty on
conviction.

§ 417. It shall be the duty of the Clerk of said Court to certify immediately such proceedings to the Governor.

Clerk shall
notify the
Governor.

§ 418. If they take, or agree to take, from any person, money or any other valuable thing, the consideration whereof is a promise or undertaking to procure, or to try to procure, a finding by the Grand Jury of "a bill" or "no bill" upon an indictment, or to make or not to make a presentment, or to prolong or procrastinate a State case or an arrest, or to advise it done, or how it may be done, the penalty and proceedings are the same as in the two preceding Sections.

Penalty for
taking, or a-
greeing to
take money
or other
thing of val-
ue to influ-
ence the
Grand Jury
in their de-
liberations.

§ 419. When a Solicitor is absent, or indisposed, or disqualified from interest or relationship to engage in a prosecution, the presiding Judge must appoint a competent attorney of the Circuit to

The Solic-
itor General
being dis-

Article 2.—Solicitors General.

act in his place, or he may command the services of the Solicitor of any other Circuit accessible, or he may make a requisition on the Governor for the Attorney General, as the emergency in his discretion may require.

qualified, the Court may supply his place.

§ 420. An attorney acting as such Solicitor is subject to all the laws governing Solicitors General; he is entitled to the same fees for what he does, and incurs the same penalties in the discharge of his duties.

An attorney, acting as Solicitor, is entitled to the same fees, etc.

§ 421. When any person makes affidavit before the Court or Grand Jury, that in his judgment the Solicitor General is guilty of an indictable offense, and that he desires to prosecute him, or the Grand Jury may present him for such an offense, it is the duty of the Court instanter to appoint some competent attorney at law to draw a bill of indictment, and when there is a true bill found, or presentment made, to put the Solicitor under recognizance or in prison, according to the offense, until the appearance of the proper prosecuting officer.

Proceedings when Solicitor is prosecuted.

ARTICLE III.

ATTORNEYS AT LAW.

SECTION.

- 422. Attorneys at law.
- 423. Rights of persons admitted.
- 424. Qualifications of applicant.
- 425. Aliens.
- 426. Application for admission.
- 427. Evidence of preparation.
- 428. Must be examined.
- 429. The manner of examination.
- 430. Examination not satisfactory.
- 431. Order of admission.
- 432. Form of the oath to be taken.
- 433. Graduates of Lumpkin Law School.
- 434. Attorneys of other States.
- 435. Order of the Court necessary.
- 436. Prohibited in certain cases.
- 437. Attorneys removing to this State.
- 438. How admitted in Supreme Court.
- 439. Failing to render the service.
- 440. Transferring fee note.
- 441. The rule for settling fees.
- 442. Attorneys may be ruled.
- 443. May bind their clients—when.
- 444. Can receive nothing but money.
- 445. Parties acting by advice of attorneys.

SECTION.

- 446. Appearing without authority.
- 447. Penalty therefor.
- 448. Required to produce authority.
- 449. When two are employed.
- 450. Leading counsel defined.
- 451. If more than one, preference given.
- 452. Special duties of attorneys.
- 453. Causes for striking an attorney, etc.
- 454. May be reinstated, and how.
- 455. Proceedings against attorneys.
- 456. Accusation must be in writing.
- 457. Proceedings must be under oath.
- 458. Requiring the accuser to appear.
- 459. Appearance.
- 460. Answer.
- 461. If objections be overruled.
- 462. Plea of guilty, or refusal to answer.
- 463. The judgment and effect thereof.
- 464. Proceedings instituted by the Court.
- 465. The attendance of witnesses.
- 466. Costs—how taxed and collected.
- 467. Death of the informant.
- 468. Jury may find proceedings malicious.
- 469. Failing to pay tax—how dealt with.

§ 422. The following persons, if not specially declared ineligible, are entitled to practice law in the Courts of this State:

Persons entitled to practice law.

Article 3.—Attorneys at Law

1. Those who have been regularly licensed under the laws of the State before the adoption of this Code.

2. Those who are hereafter licensed in the manner prescribed by law.

Rights of persons admitted in the Superior Court. § 423. Those who are admitted to practice in the Superior Courts may practice in any other Court of this State, except the Supreme Court, for which another and special license must be obtained.

Qualifications of applicant. § 424. Any white male citizen of good moral character, who has read law and undergoes a satisfactory examination before a Judge of the Superior Court, as hereinafter prescribed, is entitled to plead and practice law in this State.

Aliens. § 425. Aliens who have been two years resident in the State, and have declared their intention to become citizens, pursuant to the act of Congress, are eligible to admission as attorneys at law.

Application for admission—how made. § 426. For the purpose of admission, one must apply, by petition in writing, to a Superior Court during one of its sessions, in a Circuit of which he is resident, or has read law therein, and must show—

1. His citizenship.
2. That he is of good moral character.
3. That he has read law.
4. That he has been a resident of, or has read law in the Circuit, as aforesaid.

Certificate of preparation. § 427. The evidence of such facts must be by certificate of two attorneys of the Court, or of other evidence satisfactory to the Court.

Authorities on which to be examined § 428. The applicant must also be examined in open Court, touching his knowledge—

1. Of the principles of the Common and Statute Law of England of force in this State.
2. Of the Law of Pleading and Evidence.
3. The Principles of Equity, and Equity Pleading and Practice.
4. The revised Code of this State, the Constitution of the United States and of this State, and the rules of practice in the Superior Courts.

Manner of examination. § 429. No portion of such examination must take place out of open Court; and to enable the Judges to have proper examina-

Article 3.—Attorneys at Law.

tions, they are required, if there is not ample time during a term, to appoint a time, at least twice a year, at some County site in their respective Circuits, which has a bar of attorneys sufficient in numbers and qualifications to conduct the examinations, and, if necessary, to request and require the attendance of such attorneys from other places within the Circuit, of which appointment public notice shall be given thirty days prior to said time in some public gazette. Application for admission may be made to the Judge of each Circuit (as otherwise required) at any time.

§ 430. Such Judges are required to be strict, and to reject any applicant who does not undergo a full and satisfactory examination. Such applicant to be rejected.

§ 431. If, on examination, the applicant is found duly qualified in all the branches required, the Court must direct an order to be entered on the minutes, that, being examined and found to possess the requisite learning and ability, and having otherwise complied with all the conditions of the law, that, upon taking the oath prescribed, that the Clerk issue to him, on the payment of the fees and costs, a license to plead and practice law in the Superior Courts of this State. How admitted to practice. Must take an oath.

§ 432. The oath is as follows :

“I, ———, swear that I will justly and uprightly demean myself, according to the laws, as an attorney, counselor, and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.” Form of the oath.

Which oath must be taken in open Court, and entered on the minutes thereof.

§ 433. None of the preceding requisitions are applicable to any graduate of the Lumpkin Law School, but upon presentation of a diploma, and payment of fees, the Court shall cause his name to be enrolled among the attorneys. Graduates of Lumpkin Law School—how admitted.

§ 434. Attorneys at law residing in other States of the Union, having license to practice law in a Circuit Court therein, where, by law, the attorneys of this State are permitted to practice law, may practice in the Superior Courts of this State— Attorneys from other States—how admitted in this State.

1. By presenting a petition in writing for such purposes to the Judge of the Superior Court of any Circuit, either in term time or vacation.

2. By producing before him a certificate from a Judge of the

Article 3.—Attorneys at Law.

Must produce a certificate.

Circuit or District Court of the State of which they are citizens, under the seal of said Court, stating that the applicant is of good moral character, and has been legally admitted to practice law in such Circuit, and that, by the laws of such State, the attorneys of this State are allowed to practice law therein.

Order of admission.

§ 435. On reading such petition and certificate, such Judge shall grant an order that the applicant be admitted to practice law in this State, and shall order the Clerk of the Superior Court of the County to enter it on his minutes and file the proceedings, on the payment of his legal fees; which, when done, is a sufficient license.

Lawyers from such States as do not allow Georgia lawyers to practice in their Courts.

§ 436. Such attorneys at law of any State adjoining this are not thus permitted to practice law herein, unless those of this State are not likewise permitted to practice law in their Courts.

Lawyers from other States may be admitted to this, etc.

§ 437. Those attorneys at law of other States, who become residents of this State and do not come under the provisions of the preceding Sections, by producing to the Court satisfactory evidence that they were attorneys at law, in good standing, in a Court of similar jurisdiction in the State from which they came, may be immediately admitted to plead and practice law in this State, without undergoing the examinations as other resident applicants.

Lawyers—how admitted to practice in the Supreme Court—

§ 438. Any attorney authorized to practice law in the Superior Courts of this State is permitted to practice law in the Supreme Court—

Proof of character.

1. By exhibiting to the Court proof of good private and professional character, and otherwise complying with the terms of its rules.

2. By taking the oath prescribed.

Attorneys, when employed, failing to render the service.

§ 439. Attorneys are prohibited from collecting any note or other contract in writing given as a fee in any cause, which cause they have failed to attend to in person or by some competent attorney, from the time of employment until the rendition of judgment, and the same shall be null and void unless they were, by contract, released from such duty.

Transferring fee note or obligation and failing to render the service.

§ 440. The transfer of such notes or obligations subjects them to forfeit and pay to the person from whom the same was taken double the amount thereof, recoverable in any Court having jurisdiction of the same, unless such person is saved harmless against all fees, costs, and other necessary expenses on account thereof.

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§ 441. Unless otherwise stipulated, one-half of the fee in any cause is a retainer, and due at any time, unless the attorney, without sufficient cause, abandons the case before rendering service to that value; but in cases where he has rendered such service, and can not render the balance of service—from the act of his client, providential cause, election to office, or removal out of the State—he is entitled to retain the amount, or a due proportion, if collected, or sue for it and collect it, if not; where no special contract is made, the attorney may recover for the services actually rendered.

The rule
for settling
fees.

§ 442. Where attorneys retain in their hands the money of their clients, after it has been demanded, they are liable to rule (and otherwise) as Sheriffs are, and incur the same penalties and consequences.

May be
ruled for
money col-
lected.

§ 443. They have authority to bind their clients in any action or proceeding, by any agreement in relation to the cause, made in writing, and in signing judgments, entering appeals, and by an entry of such matters, when permissable, on the dockets of the Court, but they can not take affidavits required of their clients unless specially permitted by law.

Attorneys
may bind
their clients
—when.

§ 444. Without special authority, attorneys can not receive any thing in discharge of a client's claim but the full amount in cash.

Can not re-
ceive any
thing but
money, etc.

§ 445. Clients shall not be relieved from their liability to damages and penalties imposed by law on the ground that they acted under the advice of their counsel, but are entitled to redress from them for unskillful advice.

Parties not
relieved on
the ground
that they
acted under
the advice of
counsel.

§ 446. If it be alleged by a party for whom an attorney appears that he does so without authority the Court may, at any stage of the proceedings, relieve the party for whom the attorney assumed to appear from the consequences of his acts, if fully satisfied such allegation is true.

A party
may repudi-
ate an attor-
ney attempt-
ing to appear
for him.

§ 447. Any attorney appearing for a person without being employed, unless by leave of the Court, is guilty of a contempt of Court, and must be fined in a sum not less than five hundred dollars.

Attorneys
appearing
without au-
thority.

§ 448. The presiding Judge, or Justice, may, on motion of either party, and, on showing reasonable grounds therefor, require any attorney who assumes the right to appear in the cause to produce, or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who em-

May be
required to
produce au-
thority.

Article 3.—Attorneys at Law.

ployed him, and to grant any order that justice may require on such investigation; but, *prima facie*, attorneys shall be held authorized to properly represent any cause they may appear in.

§ 449. When two or more attorneys, being employed on the same side, dispute about the direction to be given to their cause, and the client is not present, the Judge shall hear all the facts and give preference to the leading counsel.

When two or more attorneys are employed on the same side.

Leading counsel defined.

§ 450. The leading counsel is he who, at the time of the trial, or raising of any issue connected with the cause, is, in the judgment of the Court, the counsel upon whom the client relies more than any other.

If more than one, preference is given to the one first employed.

§ 451. If there is more than one upon whom the client thus relies, the Court shall, as between them, give him preference who was first employed.

§ 452. It is the duty of attorneys at law—

Special duties enumerated.

1. To maintain the respect due to Courts of Justice and judicial officers.

2. To employ, for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never to seek to mislead the Judges or juries by any artifice or false statement of the law.

3. To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients.

4. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

5. To encourage neither the commencement nor continuance of an action or proceeding from any motives of passion or interest.

6. Never to reject, for a consideration personal to themselves, the cause of the defenseless or oppressed.

Special causes for which an attorney must be removed.

§ 453. An attorney must be removed for the following causes by the Superior Court of the County of his residence:

For crimes.

1. Upon his being convicted of any crime, or misdemeanor involving moral turpitude. In either case the record of his conviction is conclusive evidence.

Failing to pay over money when ruled.

2. When any judgment, or rule absolute has been rendered against him for money collected by him, as an attorney, which he fails to pay within ten days after the time appointed in the order; in which case the record of the judgment is conclusive evidence,

Wm. Abbott

Article 3.—Attorneys at Law.

unless obtained without any service under some law authorizing such a proceeding.

3. Upon it being shown to the satisfaction of the Court that he has been guilty of any deceit or willful misconduct in his profession. Unprofessional conduct.

4. For want of a sound mind, or for indecent behavior in or out of the Court House, whereby he becomes a nuisance to the Court, his brother members of the Bar, or the public. Indecency, want of mind, etc.

§ 454. When an attorney at law is thus removed, after the lapse of twelve months (unless removed under the first ground of the preceding Section), it is in order for him to be restored upon the application of two-thirds of the members of the Bar of the County where he was removed, and of those who usually practice in the Superior Court of said County, if approved by the Judge of the Circuit. May be reinstated and how.

§ 455. The proceedings to remove an attorney may be taken by the Court of its own motion, or upon the motion of an attorney at law or other citizen. Summary proceedings against attorneys.

§ 456. The accusation must be in writing, signed by the movant, or his attorney at law, and when the proceeding is taken by the Court, it may be drawn up by the Solicitor or the Clerk, under the direction of the Court. The accusation must be in writing.

§ 457. If the proceedings are upon the information of another, the accusation must be verified by the oath of the person making it, or some other person, and presented to the Court. Proceedings must be under oath—when.

§ 458. The Court must then, if of opinion that the accusation would, if true, be grounds of removal, make an order requiring the accused to appear and answer the same at a specified day during the same, or at the next term, and must cause a copy of the order and accusation to be served on the accused within a prescribed time before a day appointed in the order. Order requiring the accused to appear.

§ 459. The accused must appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the Court assign another day for that purpose; if he does not appear, the Court may proceed and determine the accusation in his absence. Appearance of the accused. Failing to appear, etc.

§ 460. The accused may answer, either by objecting to the sufficiency of the accusation, or by denying its truth—either of which must be entered on the minutes. Answer of the accused.

§ 461. If the objection to the sufficiency of the accusation be not sustained, the accused must answer it forthwith. Objections by the accuser.

Article 3.—Attorneys at Law.

§ 462. If he pleads guilty, or refuses to answer the accusation, the Court must proceed to judgment of removal; if he denies the accusation, the Court must immediately, or at such time as it may appoint, proceed to try the same—the accused having a right to demand a trial by jury.

§ 463. A judgment of acquittal is final, but from a judgment of removal there may be a motion for a new trial, and a review by the Supreme Court, as in other cases.

§ 464. The proceedings, when instituted by the Court of its own motion, are conducted in the name of the State—the Solicitor appearing to sustain the accusation—and when on the information of another, in the name of the State on the information of such person.

§ 465. Either party has a right to *subpoenas* and other process to compel the attendance of witnesses, and testimony may be taken by deposition in such cases and in the same manner as in actions at law, and the Court may, in its discretion, require the informant to give security for costs; and failing so to do within the time prescribed, the proceedings must be dismissed at the cost of the informant.

§ 466. When the proceedings are in the name of the State, the costs are paid as in criminal cases; when in the name of the State on the information of another, if the accusation is not sustained, judgment is rendered against the informant and his security for the costs, if the same has been given; but if the accusation is sustained against the accused, judgment for costs must be rendered against him.

§ 467. Upon the death of the informant, if there be but one, the proceedings abate, unless some other person is substituted in his place, which may be done on application to the Court; if there is more than one informant the proceedings continue on the information of the survivor.

§ 468. It is in the province of the jury who try such proceedings, if they find in favor of the accused, also to find they were malicious, if they so believe; and upon such finding the rights of the accused against the informant are the same as in cases of malicious prosecution on the criminal side of the Court.

§ 469. [And whenever it shall be made to appear to any Judge of the Superior Courts that any attorney at law practicing in said Court has failed, or fails, to pay his professional tax levied according to the laws of this State, and execution has been issued

Article 3.—Attorneys at Law.

for the same by the Tax Collector and returned by the proper officer, no property to be found, it shall be the duty of the Judge presiding in the Superior Court of the County in which the said attorney resides to cause the Clerk of said Court to issue a rule requiring said attorney to show cause, by the next term of said Court, why he should not be struck from the list of attorneys and his license to practice declared of no effect, for his failure to pay his said professional tax—which rule shall be served by the Sheriff upon said attorney twenty days before the next term of said Court; and if, at said term of said Court, said attorney fails to show sufficient cause, said Judge shall pass an order striking said attorney from the list of attorneys, and declare his license to practice in the Courts of Law and Equity in this State null and of no effect.] (a)

Proceedings against.

Shall be stricken from the roll

CHAPTER IX.

JUSTICES OF THE PEACE, JUSTICES' COURTS, AND CONSTABLES.

ARTICLE 1.—*Justices of the Peace and their Courts.*ARTICLE 2.—*Constables.*

ARTICLE I.

JUSTICES OF THE PEACE AND THEIR COURTS.

SECTION.

- 470. Two Justices in each district.
- 471. How removed from office.
- 472. Vacancies—how filled.
- 473. Election—how and by whom held.
- 474. Inferior Court may order an election.
- 475. Qualifications of a Justice.
- 476. Inferior Court may appoint—when.
- 477. The oath of a Justice.
- 478. Oath—before whom to be taken.
- 479. Criminal jurisdiction of the Justice.
- 480. Civil jurisdiction of the Justice.
- 481. Debts may be divided.
- 482. Territorial and criminal jurisdiction.
- 483. Justice may be sued in his own dist.

SECTION.

- 484. If the Justice be disqualified.
- 485. When there is no Justice.
- 486. Suits may be transferred.
- 487. When transferred.
- 488. Transferred suits.
- 489. Co-obligors, joint contractors, etc.
- 490. Residents in districts not organized.
- 491. Special powers and duties of Justices.
- 492. Justices' Courts.
- 493. Changed once in four years.
- 494. Justices newly elected.
- 495. Times and places now established.
- 496. Judgments rendered.

§ 470. There shall be two Justices of the Peace in each militia district of the several Counties of this State, elected by the people

Two Justices of the Peace in

(a) Acts of 1861, p. 16.

Article 1.—Justices of the Peace and their Courts.

each district, etc. ple of each district, in the manner hereinafter prescribed, who hold their offices for four years, unless sooner removed.

§ 471. They ~~are~~ removed from office in the manner prescribed by the Constitution, and also on conviction for malpractice in office, or of any felonious or infamous crime.

How removed from office. § 472. Vacancies are filled in the following manner: If there is a Justice of the Peace in the district where the vacancy occurs, he shall appoint some Saturday in a month, which is a time fixed for holding the Justice's Court of the district, and advertise the same at three of the most public places therein at least fifteen days before the day appointed.

Vacancies—how filled. § 473. On said day said Justice, with two freeholders, must hold said election in the same manner that a regular election for Justice of the Peace is held, and duly certify the same to the Governor, who must commission the person elected for the unexpired term.

Election—how held. Must be commissioned by the Governor. § 474. If there is no Justice of the Peace in the district where the vacancy occurs the Justices of the Inferior Court of the County must order an election in the same manner, through their Clerk, which may be held by three freeholders of the district, who must hold and certify said election in the same manner.

If no Justice of the Peace in the district, etc. § 475. All persons are eligible to the office of Justice of the Peace who are entitled, in the County in which the district is situated, to vote for members of the General Assembly, who have been three months in the district next preceding the election, and who do not labor under any disqualification. [Being a clerk shall be no disqualification.] (a)

Qualifications of a Justice of the Peace. § 476. When any district is without a Justice of the Peace, and an election has been legally ordered to supply the vacancy, and none is *bona fide* held at the time and place appointed, it is the duty of the Justices of the Inferior Court to appoint two persons, resident in the district, such Justices to have it certified to the Governor, who must commission the appointees for the required term.

On failure to elect the Justice of the Inferior Court may appoint. § 477. Justices of the Peace, before entering on the duties of their office, besides the oath required for all civil officers, must take the following oath:

The oath of a Justice of the Peace. "I do swear that I will administer justice without respect to

Article 1.—Justices of the Peace and their Courts.

persons, and do equal rights to the poor and to the rich, and that I will faithfully discharge all the duties incumbent on me as a Justice of the Peace for the County of ———, agreeably to the Constitution and laws of this State, and according to the best of my ability and understanding. So help me God.”

§ 478. Such oaths shall be taken and subscribed before the Justices of the Inferior Court of the County in session, but may be taken before any one of such Justices, and so the *dedimus potestatem* for such purpose should state.

Such oath
— before
whom taken.

§ 479. They have criminal jurisdiction in the following instances:

Their criminal jurisdiction.

1. In acting as conservators of and preserving the public peace in their respective districts and Counties.

2. In issuing warrants for the apprehension of any person charged on oath with a violation of any portion of the Penal Code, or who are so known to them officially.

3. In examining such persons when brought before them, and to commit, bind over, or discharge, according to the directions of this Code.

4. In such other cases as jurisdiction may be constitutionally given.

§ 480. They have a general and original civil jurisdiction—

Civil jurisdiction.

1. Of all suits or attachments on any liquidated demand, or an account not exceeding ~~fifty~~ dollars, exclusive of interest, or where the debt has been larger, and the balance due is not more than said amount, or on the trial is reduced to said amount by *bona fide* payments, or other lawful set-off.

2. Of contests for the mere possession of personal property.

3. Of forcible entries and detainers, or either, with the aid of a jury of twelve men, as prescribed by this Code.

4. Of all other causes when jurisdiction is constitutionally given them in their capacity as Courts or Justices.

§ 481. Debts which in the aggregate amount to more than Justice's Court jurisdiction may be divided into liquidated demands, so as to bring them each within such jurisdiction.

Debts may
be divided,
etc.

§ 482. Their criminal jurisdiction extends over persons of, or crimes committed in, their respective Counties, and their civil jurisdiction over persons residents of their respective districts and itinerant persons, and to persons of other districts, in certain particular cases provided for in this Code.

Their criminal jurisdiction extends over their County, etc.

Article 1.—Justices of the Peace and their Courts.

May be
sued in his
own district.

§ 483. One Justice of the Peace may sue or be sued before the other in his own district.

When the
Justice is
disqualified,
who may
act.

§ 484. When a Justice of the Peace is disqualified from presiding, and there is no other Justice of the Peace in his district who is qualified, any Justice of the Peace of the County is qualified to issue all process and to preside in his district; and if a Justice of the Peace is sued under such circumstances, the suit may be located in any adjoining district.

Suits—how
to be brought
when there
is no Jus-
tice, or he re-
fuses to serve

§ 485. Where there is no Justice of the Peace in any district where a defendant resides, or there is one and he refuses to serve generally, or in any particular case, the suit may be located in any adjoining district.

Suits may
be transfer-
red in cer-
tain cases.

§ 486. If suits are already commenced and are suspended for the want of a Justice of the Peace to preside, such suits shall be removed to the adjoining districts, unless the evil is removed within sixty days.

May be
transferred
to the Coun-
ty site.

§ 487. If, from any cause, all such suits can not be located or prosecuted in some adjoining district, they may be commenced or removed to the Justice's district which embraces the County site.

The Jus-
tices and
Constables
may act,
etc.

§ 488. The Justices of the Peace and Constables of any district where a suit is thus begun or removed have the same power as those officers have in the proper districts.

Co-oblig-
ors, joint
contractors,
and makers
and endors-
ers—how
sued.

§ 489. Suits *vs.* makers and indorsers, and against co-obligors or joint-makers, may be located in the district where the principal debtor or one of the co-obligors or joint-makers can be sued, and the other parties, who may reside in a different district from such in the same County, may be joined in the suit on the same terms such persons residing in different Counties may be sued in the Superior Courts, but by the process used in Justice's Courts; and in such cases the Constable of the district where the suit is located may serve such process in any part of the County.

Persons re-
siding in any
portion of a
County, etc.

§ 490. Persons resident in any portion of a County whose residence, from any cause, is not embraced in any organized Justice's district, are subjected to suit in the district whose court-ground is nearest their residence where there is an acting Justice of the Peace.

Special
powers and
duties of the
Justices en-
umerated.

§ 491. Justices of the Peace have authority, and it is their duty—

1. To select some central and convenient place in their respect-

Article 1.—Justices of the Peace and their Courts.

ive districts at which to hold their Courts, and some stated day in each month as the time, of which they shall give ample public notice, and also to keep their offices within said districts; but in towns or cities which embrace more than one district, they may hold their Courts and keep their offices at some central and convenient place within the limits of said towns or cities.

2. To fine not more than five dollars, nor imprison more than five hours, any person guilty of a contempt of Court, and to pay the fine to the County Treasurer for County purposes.

3. To issue attachments returnable to their own and, in certain cases, to the Superior and County Courts of the County.

4. To issue all process necessary to maintain their jurisdictions and enforce their authority under the sanction of law.

5. To administer oaths and take affidavits, except the power is expressly restricted to some other officer, and to take the acknowledgment or probate of any conveyances required to be recorded.

6. To keep a docket of all causes brought before them, in which must be entered the names of the parties, the returns of the officer, and the entry of the judgment, specifying its amount and the day of its rendition.

7. To carefully file away and label all papers appertaining to any cause, and all *fi. fas.* and other process returned, after being satisfied, entered "*nulla bona*," or have otherwise discharged their functions.

8. To attend the Superior and Inferior Courts of their Counties, whenever required, with such docket or papers of file.

9. To establish, when lost, in the manner prescribed by law, any paper appertaining to any suit or other proceeding in their respective Courts.

10. To answer interrogatories from Courts of other Counties, as to the contents or condition of any of the dockets, files, or papers of their office, and to attach thereto copies of such, when such interrogatories are propounded and such copies required.

11. To perform such other duties as are or may be required by law, or which necessarily appertain to their office.

§ 492. If any Justice's Court is held at an inaccessible or inconvenient portion of any district, or such a place is hereafter selected, the qualified voters of such district may petition such Justice to change the place to some other place, naming it, and

Justice's
Courts—
places of
holding—
how chang-
ed.

Article 1.—Justices of the Peace and their Courts.

if he refuses to change, they may apply to the Justices of the Inferior Court; and if such Justices are satisfied that the place where such Court is held works an inconvenience to a majority of the citizens of such district, they shall change the place, to take effect after the expiration of thirty days, have it entered on their minutes, and published in the district.

The place and time of holding Justices' Courts, etc. § 493. When a place for holding such Court is once fixed it can not be changed except in the manner stated, and then but once during the four years' official term; nor can the time be changed by the Justices but once.

New Justices may change the time and place of holding their Courts. § 494. When new Justices of the Peace are qualified, and they desire to change the place or time of holding such Courts, they may do so by giving public notice of the fact, stating the place and the time to which changed, or either, and the first Court to be thus held, which change shall not go into effect short of sixty days from the time of advertising.

Time and place of holding Justices' Courts not disturbed by the adoption of this Code. § 495. The times and places now established for holding Justices' Courts are not disturbed by the enactment of this Code, and the militia districts now established by law remain the same, but they may be altered and new districts formed by Justices of the Inferior Court of each County as hereinafter prescribed.

Judgments—when void. § 496. All judgments of such Justices rendered in any civil cause anywhere else than at the place and time for holding their Courts lawfully appointed, are void.

ARTICLE II.

CONSTABLES.

SECTION.

- 497. Two Constables in each district.
- 498. How removed from office.
- 499. Vacancy—how filled.
- 500. Justices failing to agree.
- 501. If there is but one Justice.
- 502. Justice failing or refusing to appoint.
- 503. Qualifications of Constable.
- 504. Disqualifications.
- 505. His oath of office.

SECTION.

- 506. In cases of emergency.
- 507. Must give bond and surety.
- 508. Clerk must certify.
- 509. Additional surety—when.
- 510. May be ruled and attached.
- 511. May be ruled in Superior Court.
- 512. His special duties enumerated.
- 513. Penalty for acting after retiring.

Two Constables for each district elected by the people for two years. § 497. There shall be two Constables in each militia district of the several Counties of this State, elected by the people of each district as hereinafter prescribed, who hold their offices for two years unless sooner removed.

Article 2.—Constables.

§ 498. They are subject to be removed from office on the same grounds and on the same proceedings as Clerks of the Superior Court are, and on conviction for malpractice in office as Justices of the Peace are.

How removed from office.

§ 499. Vacancies are filled by appointment of the Justices of the Peace of the district in the following contingencies:

Vacancies—how filled.

1. When, from any cause, there is a failure to elect, qualify, and give bond at the regular time.

Failure to elect.

2. When there is a death, resignation, or removal of Constable.

Death, resignation, or removal.

3. When from sickness, or other providential cause, the district is without a Constable, there may be an appointment, if an emergency arises, to continue until the regular Constable enters on the discharge of his duties.

When absent from providential cause.

4. When the Constables of the district are absent temporarily from the district the like power may be exercised.

Temporary absence from the district.

§ 500. If there are two Justices of the Peace, and they can not agree upon an appointment, the one who has served longer as such continuously and immediately preceding, shall appoint; if there are two Constables to appoint, each Justice shall appoint one.

Justices failing to agree on appointment of Constables.

§ 501. If there is only one Justice of the Peace, he may make the appointment, but it shall be in the discretion of the Justices, whether one or two, to appoint the second Constable or not, if there is one in office, or one or two if there is none in office.

When there is but one Justice he may appoint

§ 502. If the Justice of the Peace of any district fail or refuse to have as much as one Constable in their district, for as long as thirty days from the time such a vacancy occurs, the Justices of the Inferior Court of the County shall fill the appointment.

In case Justice of the Peace fail to appoint, etc.

§ 503. The eligibility for Constables is the same as that for Justices of the Peace, but any person may be appointed Constable to fill vacancies or to answer some emergency, who are at the time residents of the district.

Qualifications of a Constable.

§ 504. Constables can not be Sheriffs or Sheriffs' deputies, nor can they be either Clerks of the Superior or Inferior Courts, nor can such officers be Constables.

Disqualifications.

§ 505. Each Constable, before entering on the duties of his office, must take and subscribe, beside the oath for all civil officers, before the Clerk of the Inferior Court of his County, the following oath: "I swear that I will duly and faithfully perform all the duties required of me as Constable of the County of ———,

Oath of a Constable.

Article 2.—Constables.

according to the best of my ability and understanding. So help me God."

§ 506. Constables appointed to answer some sudden emergency, as in Section 499, may take and subscribe said oath before the Justices of the Peace appointing them, who shall file the same in the office of the Clerk of the Inferior Court.

§ 507. All Constables, except those thus appointed, must, before entering on the discharge of their duties, give a bond payable to the Justices of the Inferior Court of the County and their successors, with two good sureties resident in the County, in the sum of five hundred dollars, to be approved by such Justices, which shall be by the Clerk of said Court filed in his office and recorded in a book kept for that purpose.

§ 508. When such oath is taken and filed and such bond given, such Clerk shall issue to such Constable a certificate of such facts and make an entry thereof on his minutes, which certificate shall answer as his commission.

§ 509. Constables may be compelled to give additional bonds upon complaint made on oath before any one of the Justices of the Inferior Court, if after the hearing such Justices so order it done, and upon failure to do so shall be removed by such Justices.

§ 510. They are liable to rule, attachment, and penalties in their respective districts, but in default of any Justice of the Peace in such district, or if there are such who refuse to serve, they may be ruled before any Justice's Court of an adjoining district or the Superior Court.

§ 511. It is optional with parties to rule Constables before the Superior Court of their respective Counties, in term time, on the same terms that Justices of the Peace are ruled.

§ 512. It is their duty—

1. To attend regularly all terms of the Justice's Court in their respective districts.

2. To attend all terms of the Superior or Inferior Courts of their respective Counties, when summoned by the Sheriff for that purpose.

3. To give receipts for notes or other liquidated demands placed in their hands for collection.

4. To pay over money promptly as collected to the party entitled thereto, and in case of conflicting claims to any money, to report the same to the next Justice's Court of the district where they are amenable, for its order in the premises.

Chapter 10.—Corporate Courts.

5. To execute and return all warrants, summons, executions, and other process to them directed by lawful authority.

6. To perform such other duties as are or may be required of them by law, or which necessarily appertain to their offices.

§ 513. If any Constable exercises the duties of his office after removal from the district where he was elected or appointed, he is subject to a fine of fifty dollars for every such act, to be recovered before any Justice of the County in which he resides by any one suing for the same—one-half to the use of such person, the other half to the use of the County.

Any person acting as Constable after he is out of office subject to fine.

CHAPTER X.

CORPORATE COURTS.

(514) SECTION 514. Corporate and Police Courts—how affected by the Code.

§ 514. The organization of the various Corporate and Police Courts of this State, and the laws relative thereto, are undisturbed by the adoption of this Code, unless additional, concurrent, or exclusive jurisdiction, or cumulative remedies, are conferred by it upon them, or other Courts, or other magistracy, and then they are altered only to that extent.

Corporate and Police Courts—how affected by this Code.

TITLE VI.

Title VI

COUNTY ORGANIZATION.

CHAPTER 1.—*Militia Districts.*

CHAPTER 2.—*Incorporation of Counties, County Contracts, etc.*

CHAPTER 3.—*County Revenue.*

CHAPTER 4.—*County Officers not before specified.*

CHAPTER 5.—*Roads, Bridges, Ferries, Turnpikes, etc.*

CHAPTER 6.—*The County Poor.*



Chapter 1.—Militia Districts.

CHAPTER I.

MILITIA DISTRICTS.

SECTION.

515. Counties divided into militia districts
 516. Districts to remain the same.
 517. Must contain a captain's company.
 518. How laid out or changed.
 519. Survey and compensation therefor.

SECTION.

520. Proceedings to be recorded.
 521. To be transmitted to the Governor.
 522. Elections to be ordered by Clerk.
 523. Officers not removed by making.
 524. Not to affect pending suits.

Counties
divided into
militia dis-
tricts.

§ 515. Each County of this State is divided into militia districts according to their respective territory and population liable to bear arms.

Districts
to remain,
etc.

§ 516. Such districts as at present organized are to remain the same until changed in the manner hereinafter prescribed.

Must con-
tain a cap-
tain's com-
pany.

§ 517. Each district hereafter organized or changed must contain within its limits at least as many persons, resident at the time of the organization, liable to militia duty as are necessary to form a captain's company according to the militia laws, and in its formation must not leave any older district with a less number.

How laid
out, or
changed.

§ 518. Whenever it may be necessary and expedient to lay out a new militia district, or to change the lines of old ones, the Justices of the Inferior Court may, at any time, appoint three commissioners, citizens of the district or districts from which it is proposed to make the new district, or change the lines thereof, whose duty it shall be to lay out and define such lines, and report the same to the Clerk of such Inferior Court.

Survey and
compensa-
tion therefor

§ 519. Such commissioners have authority to engage the services of a competent surveyor to assist them in their duties, who shall be paid for his services, out of the County Treasury, the same compensation County Surveyors have for similar services rendered a citizen.

Proceed-
ings record-
ed.

§ 520. If the Inferior Court approves their report, they shall have all proceedings in the matter entered on their minutes, after which the district laid out, or line changed or defined, shall be known and regarded accordingly.

Proceed-
ings to be
transmit-
ted to the
Governor
and adver-
tised thirty
days.

§ 521. It is the duty of such Clerk, if a new district is laid out, to transmit instant to the Governor such proceedings from their minutes, duly certified, and to publish them for thirty days at the door of the Court House and in the public gazette where they do their official advertising.

Chapter 2.—Incorporation of Counties, County Contracts, Property, and Claims.

§ 522. As soon as such is done, such Clerk must immediately order an election for the requisite number of Justices of the Peace and Constables (for such district), after advertising the same for thirty days in three of the most public places of the new district.

Clerk must order an election for Justices, etc.

§ 523. If, in laying out a new district, or in changing the lines of old districts, the residences of Justices of the Peace or Constables elected are included in the new district, or cut off from the district for which they were elected, they have authority to discharge their duties for the district for which they were elected until their terms of office expire and their successors in such district are qualified, unless elected to the same office in the new district to which they are eligible.

Making or changing districts shall not remove officers.

§ 524. Suits pending in any Justice's Court must not be changed because the residence of a defendant is included in the new district or cut off into another district, but they must proceed as though no such change had been made.

Does not affect suits pending.

CHAPTER II.

INCORPORATION OF COUNTIES, COUNTY CONTRACTS, PROPERTY, AND CLAIMS.

SECTION.

- 525. Each County is a body corporate.
- 526. Suits against a County.
- 527. Contracts with the Inferior Courts.
- 528. Grants, deeds, etc.
- 529. Property of the County.
- 530. County buildings—by whom erected.
- 531. Preservation of buildings, etc.
- 532. Occupancy of rooms in Court House.
- 533. Court Houses, Jails, etc.

SECTION.

- 534. Injuries to public buildings, etc.
- 535. Dimensions and construction of Jails
- 536. Tax—by whom levied.
- 537. On failure to levy such tax.
- 538. Public buildings, etc., to be inspected
- 539. Duty of the Judge.
- 540. Claims against the County.
- 541. Must be presented in twelve months.
- 542. Judgments against the County.

§ 525. Every County which has been or may be established in this State, is a body corporate, with power to sue or be sued in any Court. [And all inhabitants of Counties in this State, who are competent jurors in other cases, are declared and shall be holden to be competent jurors in any case, in any Court, where such Counties are parties to the suit or interested therein in their capacity as corporations or *quasi* corporations.] (a)

Each County is a body corporate.

§ 526. Suits against a County must be against the Inferior Court, and personally served on the Clerk of such Court, who

Suits vs. County—how brought

(a) Acts of 1863-4, pp. 72-3.

Chapter 2.—Incorporation of Counties, County Contracts, Property, and Claims.

must make an entry thereof on his minutes, and suits by the County must be in the name of the Inferior Court.

§ 527. All contracts entered into by the Justices of the Inferior Court, with other persons in behalf of the County, must be in writing and entered on their minutes.

Contracts with the Inferior Court must be in writing.

§ 528. All deeds, conveyances, grants, or other instruments, which have been or may be made to any officer or person for the use and benefit of the County, vests in such County the title as fully as if made to such County by name.

Deeds made for the benefit of the County, etc.

§ 529. The Justices of the Inferior Court have the control of all property belonging to the County, and may by order, to be entered on their minutes, direct the disposal of any real property, which can lawfully be disposed of, and appoint a commission to make titles thereto, and the conveyance of such commission in accordance with such order, vests the grantee or vendee with the title of the County.

The Justices of the Inferior Court control the property of the County.

§ 530. The County buildings are to be erected and kept in order and repair at the expense of the County, under the direction of such Justices, who are authorized to make all necessary contracts for that purpose.

County buildings—by whom erected, etc.

§ 531. It is the duty of the Justices of the Inferior Court to erect or repair, when necessary, their respective Court Houses, and Jails and all other necessary County buildings, to furnish each with all the furniture necessary for the different rooms, offices, or cells, and to procure a fire-proof safe or safes, sufficient to hold at least all the minute books and books containing records of judgments, books of officers' bonds, all recognizances, the bonds of administrators and guardians, the record of wills and of appraisements and sales, unless the Court House has a fire-proof vault; such books and papers, and all others that can, must be placed in such safes or vaults at night, or when the officers are absent.

Duty of the Justices of the Inferior Court in relation to public buildings and records.

§ 532. Such Justices shall designate the rooms in the Court House to be occupied by each of the County officers, and enter the same on their minutes, which they may change from time to time as convenience may require.

Rooms in the Court House.

§ 533. The Court Houses, as well as Jails, the public grounds and other County property, are placed in the keeping of the Sheriffs of the respective Counties, subject to the order of such Justices, and it is their duty to preserve them from injury or waste and to prevent intrusions upon them.

Court Houses, Jails, etc., in the keeping of the Sheriffs.

Chapter 2.—Incorporation of Counties, County Contracts, Property, and Claims.

§ 534. If any person designedly destroy, injure, or deface any of the public buildings, the appurtenances thereto, or the furniture inside, or shall use either for any indecent purpose, such person shall be guilty of a misdemeanor, and on conviction be fined or imprisoned, or both, at the discretion of the Court, besides being liable for the damages.

Injuries to public buildings, etc.—how punished.

§ 535. The County Jails hereafter constructed must be of sufficient size and strength to contain and keep securely the prisoners and debtors which may be confined therein, and must contain at least three apartments, properly ventilated, so as to secure the health of those confined therein—one for debtors, one for criminals, and one for females.

Dimensions and construction of jails.

§ 536. The Justices of the Inferior Courts of the several Counties have the power to levy an extra tax sufficient to carry into effect Sections 530 and 531, without a recommendation by the Grand Jury, whenever the necessities arise.

The Justices of the Inferior Courts may levy a tax.

§ 537. If such Justices fail to comply with the requirement of said Sections, or to levy the tax, or levy an exorbitant tax, or levy one when unnecessary, their conduct may be reviewed by the Judge of the Superior Court, by *mandamus* or injunction, as the nature of the case may require, at the instance of any tax payer of the County.

On failure to levy an extra tax a *mandamus* may issue

§ 538. It is the duty of the Grand Juries to inspect all the public buildings and other property of the County and the County records, and to report in their general presentments their condition, and if they report that such Justices have failed to comply with the law touching the same, it is the duty of the Solicitor General of the Circuit to commence proceedings against them, that they may be compelled so to do, if they do not in good faith comply by the next term of the Superior Court.

Grand Juries to inspect public buildings, records, etc.

§ 539. The Judges of the Superior Court shall, when necessary, call the attention of the Grand Jury to the duties required of such Justices in this chapter.

Duty of the Judge of the Superior Court.

§ 540. Such Justices must audit all claims against their respective Counties and every claim, or such part thereof as may be allowed, must be registered, and the Clerk of said Justices must give the claimant an order on the Treasurer for the amount.

All claims against the County to be audited.

§ 541. All claims against Counties must be presented within twelve months after they accrue or become payable, or the same are barred, unless held by minors or other persons laboring under

Must be presented within one year.

Article 1.—From Taxation.

disabilities, who are allowed twelve months after the removal of such disability.

§ 542. The private property of the citizens of a County shall not be bound by any judgment obtained against the County, but such judgment, if binding, shall be satisfied from money raised by lawful taxation.

Judgments
against the
County—
how satis-
fied.

CHAPTER III.

COUNTY REVENUE.

ARTICLE 1.—*From Taxation.*ARTICLE 2.—*From Other Sources.*

ARTICLE I.

FROM TAXATION.

SECTION.

- 543. Tax for County purposes.
- 544. Duty of Justices Inferior Court.
- 545. Failure of Grand Jury to recommend
- 546. When there are several Grand Juries.
- 547. Creditors of the County.
- 548. Objects of a County tax.
- 549. When debts exceed amount raised.
- 550. The order must specify the object.
- 551. Must be advertised for thirty days.
- 552. Specific taxes.

SECTION.

- 553. How entered, collected and paid out.
- 554. Collector's fees and liabilities.
- 555. Mode of allowing commissions.
- 556. Payment of County tax, etc.
- 557. Persons holding County tax.
- 558. Failing to pay, execution may issue.
- 559. Illegality—when—how tried.
- 560. Persons borrowing County funds.
- 561. *Fi. fa.* or *ca. sa.* may issue.
- 562. The Inferior Court may remit.

§ 543. The Justices of the Inferior Court have power to raise a tax for County purposes, over and above the tax they are herebefore empowered to levy, and not to exceed fifty per cent. upon the amount of the State tax for the year it is levied, provided two-thirds of the Grand Jury at the first or Spring Term of their respective Counties recommend such tax.

Tax for
County pur-
poses—how
levied.

Two-thirds
of Grand Ju-
ry must re-
commend.

Duty of
Justices In-
ferior Court.

County
Treasurer.

Financial
condition of
the County,
etc.

§ 544. It is the duty of such Justices to see that by the time of the organization of such Grand Jury they shall have prepared by their County Treasurer, under their supervision, a statement of the financial condition of the County, and the amount of tax required to discharge the County liabilities for that year, which shall be by the Treasurer presented to the Foreman of the Grand Jury on the first day of Court for inspection by that body.

§ 545. If from any cause such Grand Jury is not impanneled,

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or they adjourn without taking any action thereon, or they refuse to make such recommendation sufficient to discharge any judgment that may have been obtained against the County, or any debt for the payment whereof there is a *mandamus*, or the necessary current expenses of the year, such Justices may levy the necessary tax without such recommendation.

If the Grand Jury fail to recommend a tax.

§ 546. When there are several Grand Juries impaneled during such term the recommendation of either panel shall be sufficient authority, but if there are counter presentments on the subject it shall be as though there had been an entire failure to report thereon.

If there be several Grand Juries, etc.

§ 547. The right of a creditor of a County to compel such tax levied, or of a tax payer to resist it, is the same as set forth in Section 537, touching tax for building.

Creditors of the County and tax payers.

§ 548. County taxes shall be assessed for the following purposes:

Objects of levying a County tax.

1. To pay the legal indebtedness of the County due, or to become due during the year, or past due.

2. To build or repair Court Houses or jails, bridges or ferries, or other public improvements, according to the contract.

3. To pay Sheriffs, Jailors, or other officers' fees that they may be legally entitled to, out of the County.

4. To pay Coroners all fees that may be due them by the County for holding inquests:

5. To pay the expenses of the County for Bailiffs at Courts, non-resident witnesses in criminal cases, fuel, servant hire, stationery, and the like.

6. To pay jurors, when by the local law they are allowed a *per diem* compensation.

7. To pay expenses incurred in supporting the poor of the County, and as otherwise prescribed by this Code.

8. To pay charges for educational purposes, to be levied only in strict compliance with the law.

9. To pay any other lawful charge against the County.

§ 549. When debts have accumulated against the County so that one hundred per cent. on the State tax, or the amount specially allowed by local law, can not pay the current expenses of the County and the debt in one year, they shall be paid off as rapidly as possible, at least twenty-five per cent. every year.

When debts exceed the amount raised by taxation, etc.

§ 550. As soon as the County tax is assessed for the year, it

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The order must specify the object, per cent. levied, and be entered on the minutes. shall be done by order of such Justices and entered on their minutes, which must specify the per cent. levied for each specific purpose. The assessment applies to every species of value or specifics which is taxed by the State, [including the value of shares in any railroad that is in running condition, or banking company owned by any person either in their own right or in the right of another; and such owner shall return the number and value of such shares with his other taxable property; but such shares shall not be so taxed if it interferes with the previous vested rights of the railroad or bank under its charter.] (a)

The order to be advertised thirty days by the Clerk. § 551. The Clerk of the Inferior Court must advertise immediately a copy of such order for thirty days at the door of the Court House and in a public gazette, if one is published within the limits of their respective Counties, and furnish the Tax Collector with another copy, and if he fails so to do, shall be fined by such Justices not less than fifty dollars.

Taxes for a specified purpose. § 552. Taxes raised for educational purposes, or the support of the poor, or any other specific purpose, must be used for such purpose respectively, and none other.

How entered, collected, and paid out. § 553. All taxes so levied for County purposes must be assessed upon the Tax Receiver's books for each year, and collected by the Tax Collector, who shall pay the same to the County Treasurer, except educational tax, which shall be paid to the Ordinary.

Collector's fees and liability. § 554. The Tax Collectors shall be allowed the same commissions and fees for such collections as they are allowed by law for the collection of the State tax, and are liable to the same fines and forfeitures for any default or improper conduct.

Mode of assessing commissions. § 555. [The Inferior Courts in allowing Collectors their commissions for collecting the taxes levied by their respective Counties are authorized and required to aggregate the taxes for the various purposes levied, and to allow commissions on the whole amount, in accordance with the schedule from which the Comptroller General is authorized to allow commissions to Collectors for collecting the State tax.] (b)

Payment—how enforced. § 556. Any other remedy or right allowed by law for the enforcement of the collection and payment of the State taxes, either by the Comptroller General or Tax Collector, may be used for the County taxes by the Justices of the Inferior Courts.

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§ 557. Such Justices shall also have authority to compel all persons, their heirs, executors, or administrators, who have or may have in their hands any County money, collected for any County purpose whatever, to pay over the same.

Persons holding County tax compelled to pay over the same.

§ 558. On failure to pay the same, such Justices shall cause their Clerk to issue executions against such persons and their securities, if any, for the full amount appearing to be due, as the Comptroller General issues executions against defaulting Tax Collectors.

On failure to pay, execution may issue.

§ 559. If such execution shall issue for too much, or if defendant denies on oath owing any part thereof, he may, by filing an affidavit of illegality, according to the rules governing other illegalities, cause an issue to be formed thereon, which shall be tried by a special jury at the first term of the Superior Court thereafter.

Illegality—on what grounds.

When and how tried.

§ 560. The provisions of the foregoing four Sections are applicable to all persons and their sureties who may borrow, or pretendedly borrow, any County money from any person having custody thereof, and shall be, in all respects, held as holders of County funds.

All persons borrowing money belonging to the County subject to the four preceding Sections.

§ 561. Where the Justices of the Inferior Court are authorized to issue *fi. fas.*, they are also authorized to issue *ca. sas.* on the same terms as other plaintiffs.

Fi. fa. or *ca. sa.* may issue.

§ 562. In all cases where persons have been overtaxed, or for any other cause taxes are claimed to be remitted, refunded, or in any manner claimed against, the Inferior Court shall be authorized to hear and determine such application to the extent of the interest of the County therein.

The Justices of the Inferior Court may remit the County tax.

ARTICLE II.

FROM OTHER SOURCES THAN TAXATION.

SECTION.

- 563. Sources of the County revenue.
- 564. Retail licenses—shows, etc.
- 565. Licenses issued for one year.
- 566. Retailing spirits without license.
- 567. Exhibiting shows, etc.
- 568. Peddling without license.
- 569. Disabled soldiers may peddle.
- 570. Tax payer may demand a license.

SECTION.

- 571. Violations of preceding Sections.
- 572. Duty of Clerk in relation to shows.
- 573. Special defense—how made.
- 574. Damages against defendants.
- 575. Not to interfere with Penal Code.
- 576. Money raised—how appropriated.
- 577. The Clerk failing to pay over money.

Article 2.—From Other Sources than Taxation.

§ 563. All sums which are paid into the County Treasury for the following accounts make a part of the County revenue—viz:

Sources of County revenue other than by taxation.

1. For the authorized sale of any County property, unless otherwise directed.
2. For the rent or hire of any County property.
3. For shows or exhibitions.
4. For licenses to sell spirituous liquors in any quantity.
5. From estrays.
6. From licenses to peddle.
7. From any other sources.

§ 564. The County charges for such licenses are as follows:

Retail licenses, exhibitions, and shows.

To retail spirituous liquors.....	\$25 00
To sell spirituous liquors, not by retail, in quantities less than one gallon.....	5 00
To peddle within the County, unless otherwise provided by the Inferior Court under the law.....	50 00
To exhibit shows with horses.....	10 00
To exhibit animals, beasts, and the like.....	10 00
To exhibit pictures or figures.....	5 00
To exhibit any other show, not less than \$5.00, nor more than \$25.00, as the Justices of the Inferior Court may order.	
To exhibit theatricals or musical entertainments, for profits to the proprietor, not more than \$5.00 on each exhibition, and subject to contract with the Court.	

Licenses, except for exhibitions, issue for one year.

§ 565. All such licenses, except exhibitions, are for the term of one year, extending to the County limits; but license to retail or sell spirituous liquors will only authorize, either by the person in whose name it issues or his clerk, to sell at some one fixed place in the County, which must be specified in the license.

Retailing without license.

§ 566. If any person retails or sells spirituous liquors without first obtaining such license, or, having obtained it, sells at any other or more places than the one fixed in the license, or transfers it and allows it used by any other person than himself or an authorized clerk, he forfeits to the County, for each violation, twenty-five dollars.

Exhibiting shows, etc., without license.

§ 567. If any person exhibits any show without first obtaining such license, or exhibits a show different from that for which he obtained license, he forfeits to the County three times the cost of license for each exhibition.

Peddling without license.

§ 568. If any person, except a disabled soldier of this State, peddles without first obtaining such license in Counties where the Justices of the Inferior Court take no action regulating peddling,

Article 2.—From Other Sources than Taxation.

he forfeits to the County one hundred dollars for the first act of peddling, and for each month thereafter, twenty-five dollars more.

§ 569. [It shall be lawful for any disabled soldier of this State to peddle in any County or Counties thereof without paying for license for the privilege of so doing; and a certificate from the Justices of the Inferior Court of any County, stating the fact of his being such disabled soldier, shall be sufficient evidence thereof: *provided* that this Section shall not authorize peddling ardent spirits, and *provided also* that the privilege hereby granted shall not be transferred to or used by any other person.] (a)

Maimed soldiers may peddle without fee.

§ 570. Any tax payer of a County may call upon any person in pursuit of any occupation for which a license must be obtained to exhibit his license, and if he fails so to do, it shall be sufficient grounds, on making affidavit of the fact, to cause such forfeiture; and if, on investigation, it appears that he has such license, he forfeits the sum of ten dollars and costs.

Any tax payer may demand a license.

§ 571. If any Justice of the Inferior Court, or Clerk thereof, of their own knowledge, knows of the violation of the foregoing three Sections, or if any person will make affidavit of such fact, it is the duty of the several Clerks of the Inferior Courts of this State, unless they know to the contrary, to issue a process directed to all and singular the Sheriffs and Constables of this State for the amount of such forfeit, commanding them to levy on sufficient of the property, real or personal, of the defendant to satisfy the same and costs, and to levy and sell the same as in case of attachments; and in default of finding goods enough for such purpose, to arrest such defendant and him safely keep as in cases of persons under *ca. sa.* Such process must be returned to the Court from whence it issues.

Violation of the three preceding Sections—how punished.

Clerk to issue process.

Levy, sale, etc.

Defendant may be arrested.

§ 572. If any show is on exhibition in any County without the license required, it is the duty of the Clerk of the Inferior Court instantler to place such process in the hands of such officer; and if, on presentation, the license fee required and all costs are instantler paid, it shall discharge the same, but not otherwise; but if such course is not taken, it is no waiver of such forfeiture.

Duty of the Clerk of the Inferior Court in relation to shows.

§ 573. Persons against whom such process may issue may arrest the same by swearing that they have not violated the law on account of which process has issued, and by otherwise complying

Persons proceeded against may defend.

Article 2.—From Other Sources than Taxation.

with the provisions of the Section against persons holding County funds, and which shall be returned and tried in the same manner.

§ 574. If, on the trial of such issue, the jury who tries shall believe that such affidavit was filed for delay only, or is without any excuse to sustain it, they shall so state in their verdict, and if they so find, the defendant shall pay twenty-five per cent. additional.

§ 575. The penalties and forfeitures hereinbefore set forth are not to interfere with any provision of the Penal Code, that is or may be enacted, making such acts penal.

§ 576. The moneys arising from such licenses are to be paid to the County Treasurer to be used for County purposes, but one-half of moneys arising from forfeitures go to the informers.

§ 577. When any Clerk of the Inferior Court shall neglect to pay over to the County Treasurer, if *he* is not County Treasurer, or shall retain in his hands any money collected on account of the County, or belonging thereto, the Justices of the Inferior Court may compel him to do so by rule at any time, and if he then fails so to do they may issue *fi. fa.* against him and his securities as against defaulting Tax Collectors, and the proceedings then and afterwards shall in every respect be the same.

CHAPTER IV.

COUNTY OFFICERS NOT HEREIN BEFORE SPECIFIED.

ARTICLE 1.—*County Treasurer.*

ARTICLE 2.—*County Surveyor.*

ARTICLE 3.—*County Coroner.*

Article 1.—County Treasurers.

ARTICLE I.

COUNTY TREASURERS.

SECTION.

- 578. Election and term of office.
- 579. Failure to elect at a regular time.
- 580. When such election should be held.
- 581. Must give bond and take an oath.
- 582. Term of office.
- 583. Vacancies—how filled.
- 584. Qualifications.
- 585. Clerk being appointed Treasurer.
- 586. Oath of the County Treasurer.
- 587. Amount of his bond.
- 588. Appointment to fill vacancies.
- 589. County funds, by whom received, etc.
- 590. His office—where kept.
- 591. Treasurer's duty, etc. ■
- 592. Books to be furnished.

SECTION.

- 593. Books, etc.,—where deposited.
- 594. Debts of County—what order paid.
- 595. County orders—when payable.
- 596. Persons holding orders.
- 597. Orders not paid for want of funds.
- 598. County orders negotiable.
- 599. Treasurer shall not purchase.
- 600. Buying at a discount, etc.
- 601. Clerk failing to render a statement.
- 602. Duty of the Treasurer, etc.
- 603. Both offices held by same person.
- 604. Treasurer failing to pay over.
- 605. Must turn over books, etc.
- 606. Final settlement on retiring.

§ 578. County Treasurers are biennially, on the second Monday in January, appointed by the Justices of the Inferior Court of each County, except when there is a regular election for such Justices, when it must be done as soon after their qualification as possible. County Treasurer — how elected, and term of office.

§ 579. If there are not as many as three of such Justices in commission, who meet at the time designated for such appointment, it may be adjourned from time to time until there are at least three present. Justices of the Inferior Court failing to attend.

§ 580. Such appointment should take place as long as possible before the first session of the Superior Courts in each County for the year. When the appointment should be made.

§ 581. No appointment is effectual until bond and security is given and the oath of office taken. Must take an oath and give bond.

§ 582. When once appointed or elected, and qualified, they hold their offices [for two years and] (a) until their successors are qualified, unless sooner removed, and they may be removed in the same manner that Clerks of the Superior Courts may be, to be judged of by the Justices of the Inferior Court, unless elected by the people, and in that case by the Superior Court. May be removed from office, and how.

§ 583. Vacancies are filled by the appointment of such Justices, whether the Treasurers are originally elected by the people, or appointed by them. Vacancies — how filled.

(a) Acts of 1863-4, p. 18.

Article 1.—County Treasurers.

§584. No other conditions of eligibility are required save those that apply to all other officers, but no other officer can be County Treasurer except a Clerk of the Inferior Court.

His qualifications.

§585. When a Clerk of the Inferior Court is thus elected or appointed, he shall take the oath and give the bond required of a County Treasurer, but the securities on his Treasurer's bond shall be different from those on his Clerk's bond, unless they are clearly able to satisfy both. His oath of office must be entered on the minutes of the Inferior Court and filed in the office of the Ordinary, and his official bond must be filed and recorded in said office.

The Clerk of the Inferior Court being appointed Treasurer must take an oath and give bond.

The oath and bond must be recorded.

§586. County Treasurers before entering on the duties of their office, besides the oath required of all civil officers, must take the following oath—viz: "I, ———, do swear I will faithfully collect, disburse and account for all moneys or other effects of the County, and otherwise faithfully discharge all the duties required of me by law, as County Treasurer. So help me God."

The form of the oath.

§587. They shall also, within ten days from their election or appointment, give a bond payable to the Justices of the Inferior Court of the County, with securities to be by them approved, in a sum which, in their judgments, will be double the amount of the County tax for the ensuing year, receipts from other sources, and cash on hand.

Amount of his bond.

§588. The bonds of appointees to fill vacancies shall be likewise in their discretion, taking into consideration the amount that may come to their hands and for double such amount.

Appointees to fill vacancies must give bond.

§589. All County funds are to be paid to and disbursed by the County Treasurer, except such as may be specially excepted by law, and then to be collected and disbursed as specially directed.

County funds — by whom received and paid out.

§590. He must keep his office at the County site, or at some place within one mile of the Court House.

Office—where kept.

§591. It is their duty—

Duty of the County Treasurer in collecting.

1. To diligently collect from all officers and others all County dues.
2. To examine the minutes and execution dockets of the different Courts of the Counties, to demand and receive all moneys appearing to be due thereon, and to institute proceedings against defaulters.

3. To pay without delay, when in funds, all orders, according to their dates (or other debts due), and when not in funds as hereinafter prescribed.

Duty of the County Treasurer in paying out.

Article 1.—County Treasurers.

4. To take a receipt on each order when paid and carefully file it away. Must take receipts

5. To keep a well-bound book in which shall be entered all receipts, stating when received, who from, and on what account, and all amounts paid out, stating when paid, to whom, and on what account.

6. To keep a well-bound book in which shall be entered a full description of all County orders, or other forms of indebtedness, as they are presented; to record a copy of the orders of the Inferior Court levying County taxes. Shall keep a record of the indebtedness of the County.

7. To exhibit to the first Grand Jury at the first session of the Superior Court of each year, a full statement of the condition of the County Treasury up to that time, and on the second Monday in January, annually, to file with the Clerk of the Inferior Court a full statement of his account, accompanied by his vouchers for the preceding year, together with his estimate of the indebtedness of the County for the ensuing year, and the means of providing therefor, and to place his books before either of said bodies for examination when called upon. Shall exhibit the same to the Grand Jury. A statement of the County funds to be filed with Clerk of the Inferior Court.

8. To appear before either of said bodies to render an account of his actings and doings as County Treasurer, and to exhibit his books and vouchers whenever notified.

9. To publish at the door of the Court House, and in a public gazette, if there is one published in the County, a copy of his annual statement to the Justices of the Inferior Court. Annual statement to be advertised.

§ 592. All books and stationery the County Treasurer may require must be furnished at the expense of the County. Books, etc., to be furnished by the County.

§ 593. When the books of such Treasurer are full, they, together with the vouchers or other files relating thereto, or connected with the office, must be deposited in the office of the Clerk of the Inferior Court and afterwards be part of their records. Books, vouchers, etc. — when deposited.

§ 594. When there are funds enough to pay all outstanding orders and other forms of indebtedness due, which the Treasurer may be authorized to pay, they may be paid indiscriminately without regard to their dates; when there is enough to pay all dated anterior to some particular dates, all such may be likewise paid indiscriminately; when there is not enough to pay all of equal degree, they shall be paid ratably; under all other circumstances, they shall be paid in the order of their dates. The order in which the debts of the County shall be paid.

§ 595. No order shall be paid until after five days from its date

Article 1.—County Treasurers.

County orders — how paid.

and delivery, unless otherwise specially ordered, that the Clerk of the Inferior Court may furnish in the meantime the County Treasurer with a full statement of all orders issued, which shall be by him immediately registered, and when so registered shall be paid according to law without further notice to the Treasurer previous to the time of payment.

Persons holding County orders failing to present them.

§ 596. If any person holding County orders shall fail to present them by the first day of December of each year to the County Treasurer for payment, they shall be postponed to all orders which were so presented and not paid for want of funds.

Orders not paid for want of funds.

§ 597. On the first day in December of each year such Treasurer shall make an entry of all orders entitled to payment which were not so presented for payment, and what orders not of equal dignity have been paid instead, in whole or in part, and what others are entitled to payment before such non-presented orders. Persons holding such orders, who present them without receiving their pay before said day, may have the Treasurer annually to mark thereon "*Presented*," the day of presentation, and not paid for want of funds.

County orders negotiable.

§ 598. All County orders are negotiable by delivery or endorsement, and the endorser liable according to the terms of his endorsement, as in commercial paper, but no such transfer can take place so as to prevent a Treasurer from setting off any sum that the payee may be due the County at the date of the order.

Treasurer shall not purchase orders at a discount.

§ 599. Such Treasurer is forbid to buy up any County orders or claims for less than their full par value, either by himself or agents, directly or indirectly, or by paying for them in property at an estimated value above its true value.

Penalty for buying orders at a discount, or refusing to pay.

§ 600. If any County Treasurer shall thus buy up any County order or claim, or refuse to pay an order when he has funds to pay the same, or illegally postpone one, he shall be removed from office on complaint and proof being made to the Justices of the Inferior Court, and is moreover guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred nor more than five hundred dollars.

The Clerk failing to render a statement to the Treasurer.

§ 601. If any Clerk of the Inferior Court shall fail to render in at the time required, to the County Treasurer, a full statement of the County orders as they are passed (except from providential cause or unavoidable accident), he is guilty of a contempt of Court, and shall be fined not less than one hundred dollars for

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each failure; and in case such Justices fail so to fine such Clerk, they are also guilty of a misdemeanor, and, on conviction, shall be likewise fined. Shall be fined not less than \$100.

§ 602. If the Clerk is unable to render such schedule, or fails so to do by the end of five days, it is the duty of the County Treasurer to examine the proper books, minutes, or files of such Clerk, and take therefrom such schedule, and on failure so to do, except from providential cause, he incurs the same penalty that the Clerk does. Duty of the Treasurer on the failure of the Clerk to make returns.

§ 603. When the Treasurer and the Clerk of the Inferior Court are the same person, separate books must be kept, the same separate duties must be performed, so far as possible; and if a Clerk who is Treasurer is removed as Clerk, it works his removal as Treasurer. When the offices of Treasurer and Clerk is held by the same person.

§ 604. When the County Treasurer at any time fails to pay any order which is entitled to payment, or other legal demand upon him, or to pay any balance that may be in his hands to his successor, or to the person entitled to receive it, the Justices of the several Inferior Courts may issue execution against him and his sureties for the amount due, as against a defaulting Tax Collector. County Treasurer failing to pay over money, execution may issue.

§ 605. In case of the resignation, expiration of the term, or removal from office, such Treasurer, or if he is dead, his personal representative, must state his accounts, and deliver all the money, books, papers, and property of the County to his successor, as other officers do, who must report the same immediately to the Justices of the Inferior Court. County Treasurer must turn over to his successor books, etc.

§ 606. When such County Treasurer or his representative has made a fair and full statement of all his accounts and liabilities as such, an exoneration of himself and sureties, together with the details of such settlement, must be entered on the minutes of the Inferior Court, and be final, except for fraud. Final settlement of a retiring Treasurer.

NOTE.—In many Counties the Treasurer is elected by the people. See local acts as to each County, none of which are included in this Code, or repealed by its adoption, unless expressly mentioned.

Article 2.—County Surveyors.

ARTICLE II.

COUNTY SURVEYORS.

SECTION.

- 607. How elected and removed from office.
- 608. Failing to elect at the regular term.
- 609. Appointed by the Court.
- 610. His oath and bond.
- 611. May be removed from office.
- 612. One for each County.
- 613. Assistant must take an oath.
- 614. May keep his office at his residence.

SECTION.

- 615. General duty of County Surveyor.
- 616. Fees for surveys—how paid.
- 617. Survey made between Counties.
- 618. Charges for surveys—how contested.
- 619. Surveys and plats—when evidence.
- 620. When there is no County Surveyor.
- 621. Others acting as County Surveyors.
- 622. Making false survey—how punished.

§ 607. County Surveyors are elected, commissioned, qualified, and removed as Clerks of the Superior Courts are, and hold their offices for two years.

County Surveyor —
how elected,
etc.

§ 608. In case there is a failure to elect a person who is commissioned and qualified at the regular time, or a vacancy occurs, the Justices of the Inferior Court must appoint such Surveyors, which appointment takes effect as prescribed in the case of County Treasurers.

On failure
to elect at
regular time.

§ 609. If a County Surveyor derives his authority from appointment, he needs no commission beyond the order of such Justices entered on their minutes, of which appointment the Governor of the State must be informed by their Clerk without delay.

If a p-
pointed by
the Court,
he needs no
commission.

§ 610. Before entering on the duties of his office, besides the oath required of all civil officers, he must take the following:

His oath.

“I, ———, swear that I will, to the best of my skill and knowledge, discharge the duties of Surveyor of ——— County, and that I will not admeasure, survey, or lay out any land in my capacity as such, or knowingly permit or cause it to be done, without a warrant first obtained for that purpose. So help me God.”

He shall also, at the same time, give bond and security in the sum of one thousand dollars.

§ 611. Whether appointed or elected, besides the causes of removal which apply to all officers, he may be removed by the Justices of the Inferior Court for want of capacity, on the same proceeding before them, and by them to be decided, that officers are removed in the Superior Courts.

May be
removed by
the Justices
of the Infe-
rior Court.

§ 612. There must be one for each County, and he is empowered to appoint one or more assistants or deputies, for whose conduct he is responsible.

Must be
one for each
County.
May have
an assistant.

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§ 613. When such an assistant is appointed he must take the same oath the Surveyor takes, and the fact of the appointment must, at the same time, be entered on the minutes of the Inferior Court. Must take an oath.

§ 614. The County Surveyor may keep his office at his place of abode, if within the limits of the County. May keep his office at his residence

§ 615. It is his duty—

1. To punctually observe and carry into effect all such orders as he may receive from the Surveyor General or other officer who may lawfully command him. The duty of the County Surveyor.

2. To admeasure and lay off dower, to partition lands, to make re-surveys, to give plats of all surveys, and to administer all oaths required by law in such cases.

3. To survey County lines and district lines, or other surveys, in which his County may be interested, whenever required by the Justices of the Inferior Court. Must survey County and district lines.

4. To execute all surveys required by the rule of any Court of competent jurisdiction.

5. To keep a well-bound book in which shall be entered plats of all surveys made by him, with a minute of the names of the chain-bearers, when executed, by whose order and to whom plat delivered, if any; which book shall belong to his office and be turned over to his successor, and when full shall be deposited in the office of the Clerk of the Inferior Court. Must keep a record.

§ 616. When surveys are made for private or corporate benefit, the fees are to be paid by the person, or persons, or corporation who orders the survey; when by order of the Justices of the Inferior Court, out of the County funds; and when by rule of Court, unless otherwise agreed upon, they are to be taxed in the bill of costs, and shall have the effect of a judgment lien upon the land surveyed, if not paid by the party bound for costs. Fees for surveys--how paid.

§ 617. When a survey is made by agreement, or in compliance with the law, between two or more Counties, the County Surveyor who performs the survey is to be paid by his County, which must collect from the other Counties their proportion. Survey between Counties.

§ 618. If after a County Surveyor has made a survey for any person, who neglects to pay him, such Surveyor upon making oath before the Clerk of the Inferior Court of his County of the performance of such service and its value, such Clerk shall issue a *fi. fa.* in the name of the Justices of the Inferior Court, for the Payment of Surveyor's fees—how enforced.

Article 2.—County Surveyors.

use of such Surveyor, against such defaulter, who may defend himself therefor, in the same manner as persons against whom executions issue who detain County funds.

Surveys or
plats of land
—when evi-
dence.

§ 619. Surveys or plats of land made by the County Surveyor, under order of Court, and on notice to all the parties of lands within his County, signed by him officially, and stating the contents, courses, distances, of any land surveyed by him, are presumptive evidence of the facts, if all the requisites of the law touching such surveys and the reports thereof are complied with.

When there
is no Coun-
ty Surveyor
who may act.

§ 620. When there is no County Surveyor, any competent person, a citizen of the County, may perform his duties, when specially required, if first sworn to do the same skillfully, faithfully, and impartially, to the best of his knowledge; or in default of such person the County Surveyor of an adjoining County may officiate.

Persons
acting as
County Sur-
veyor liable
as such.

§ 621. Persons performing such service are on the same footing as County Surveyors as to the special service rendered, and are personally liable as such Surveyors are officially.

False sur-
vey and pen-
alty.

§ 622. When any County Surveyor, or other person acting as such, has knowingly surveyed land as vacant land which is not, or so made any other false survey, he is guilty of a misdemeanor, and on indictment and conviction shall be imprisoned not longer than six months.

ARTICLE III.

CORONERS.

SECTION.

- 623. How elected and removed from office
- 624. Justices Inferior Court may appoint
- 625. Coroner's oath.
- 626. Must give bond and surety.
- 627. Additional surety may be required.
- 628. Jailor, when Sheriff is imprisoned.
- 629. Shall serve process in certain cases.
- 630. Shall hold inquests in certain cases.

SECTION.

- 631. May disinter dead bodies.
- 632. Subject to indictment.
- 633. Inquest unnecessary in certain cases.
- 634. Death by accident, etc.
- 635. Costs paid out of County funds, etc.
- 636. On conviction, costs a part thereof.
- 637. Justice of the Peace may act, etc.

Coroners—
how elected
and remov-
ed.

§ 623. Coroners are elected, commissioned, qualified, and re-
moved, as Clerks of the Superior Courts are, and hold their
offices for two years.

Article 3.—Coroners.

§ 624. The Justices of the Inferior Courts appoint Coroners on the same terms and in the same manner that they do County Surveyors, which appointments take effect as those of County Treasurers.

Justices
of the Infe-
rior Court
may appoint

§ 625. Before entering on the duties of his office, besides the oath required of all civil officers, he must take the following: "I swear that I will well and truly serve the State of Georgia in said office, and will faithfully and truly execute all writs and precepts to me directed, or which I may lawfully execute, when placed in my charge, and return the same according to the best of my knowledge, skill, and judgment; that I will, in no case, knowingly use or exercise my office illegally, corruptly, or unjustly, and that I will not, under any pretense, take, accept, or enjoy, any fee or reward pertaining to my office, other than such as are allowed by law, but that I will, in all things touching the duties of my office, demean myself honestly, fairly, and impartially, according to the best of my ability. So help me God."

Coroner's
oath.

§ 626. He must likewise, at the same time, give bond and surety in the sum of five hundred dollars, which may be for a greater or less amount, according to the local law now or hereafter in force. He is liable for retaining moneys collected, or otherwise failing to do his duty, as Sheriffs are, and is subject to the same proceedings.

Must give
bond and
surety.

Liable as
Sheriffs.

§ 627. When a Coroner has to act in the place of a Sheriff, generally or specially, the Justices of the Inferior Court may require of him an additional bond, in such sum and with such sureties as in their discretion they may think sufficient to meet the contingency.

Additional
bond may
be required.

§ 628. He is keeper of the jail, when the Sheriff is imprisoned or absent from the County, leaving no deputy.

Keeper of
jails—when.

§ 629. When a Sheriff is disqualified, and it does not appear upon the face of the proceedings, or he, or his deputy, refuses to perform a service, if any person makes affidavit thereof, the Clerk of the Court from which it issues shall place the process in the hands of the Coroner for execution, and may compel its return to his office for such purpose.

Shall serve
process—in
what cases.

§ 630. It is the duty of the Coroner to take inquests—

1. Of all violent, sudden, or casual deaths.

2. Of all deaths in prison, without an attending physician.

Shall hold
inquests—in
what cases.

Article 3.—Coroners.

3. Of all dead bodies found, whether of persons known or unknown.

4. Of all dead bodies of persons who have died or disappeared under suspicious circumstances.

5. Of the dead bodies of persons of whom affidavit may be made, that they came to their death by violence or foul play.

6. Whenever ordered by a Court having criminal jurisdiction.

§ 631. They are authorized, in order to carry into effect the preceding Section, to disinter any body already buried, and, like a Sheriff, to command the power of the County for that purpose.

May disinter dead bodies.

§ 632. If any person makes affidavit to facts to authorize such proceeding by the Coroner, or the Coroner does so of his own motion, and it is done without good grounds, or from malice or mischief, the person so swearing, or the Coroner so officiating, is subject to indictment, and if convicted shall be fined not less than one hundred dollars and imprisoned not less than thirty days. In such cases all the circumstances shall go to the jury, and if they believe there were reasonable grounds for the disinterment at the time it took place, it is their duty to acquit.

Person making affidavit subject to indictment.

On conviction shall be fined and imprisoned.

§ 633. When persons have come to their death by violence, and there are witnesses to it, and the person accused is under arrest and undergoes an examination before a competent tribunal, there need not be an inquest.

An inquest unnecessary.

§ 634. There also need be no inquest where persons come to their death by accident or act of God, in presence of witnesses, and there is no reason to suspect foul play and no person makes affidavit of facts raising such suspicions.

Death by accident or the act of God.

§ 635. The costs of such inquests shall be paid out of the County funds.

Cost to be paid by the County.

§ 636. If any person is convicted of murder or manslaughter in a case where an inquest has been held over the body of the person for slaying whom he is convicted, the costs of the inquest make a part of the costs of the conviction, and must be so charged.

If the party charged is convicted, the costs make a part of the conviction.

§ 637. When there is no Coroner in a County, or he is absent from the County when needed, or will not or can not take an inquest, any Justice of the Peace of the County may act as Coroner.

A Justice of the Peace may act.

Article 1.—Public Roads.

CHAPTER V.

ROADS, BRIDGES, FERRIES, TURNPIKES, CAUSEWAYS,
CROSSINGS, ETC.ARTICLE 1.—*Public Roads.*ARTICLE 2.—*Road Commissioners and their Duties.*ARTICLE 3.—*Bridges, Ferries, Turnpikes, and Causeways.*ARTICLE 4.—*Railroad Crossings.*ARTICLE 5.—*Private Ways.*ARTICLE 6.—*Mining.*

ARTICLE I.

PUBLIC ROADS.

SECTION.

- 638. What roads are considered public.
- 639. Shall be thirty feet wide.
- 640. Bridges and Causeways, 16 feet wide.
- 641. Districts laid out, etc.
- 642. Roads and Districts to be registered.
- 643. How laid out or altered.
- 644. Notice of application advertised, etc.
- 645. Holders of land—how notified.
- 646. Roads established, etc.
- 647. Application must be in writing.
- 648. Laid out the nearest and best way.
- 649. Persons subject to road duty.
- 650. What roads to be worked.
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- 652. Lists of hands to be furnished.
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- 659. Extraordinary implements.
- 660. Road may be apportioned.
- 661. Persons to whom road apportioned.
- 662. Applicant refusing to accept.
- 663. Failing to work after acceptance.
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SECTION.

- 665. Defaulters may file excuse.
- 666. Executions against defaulters.
- 667. Fine money—how appropriated.
- 668. Constables collecting, etc.
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- 671. Public roads measured and posted.
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- 677. Persons claiming damages, etc.
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- 679. Notice to Justices, etc.
- 680. The time and place of meeting.
- 681. Objections to jurors.
- 682. Continuances, etc.
- 683. Mistrial.
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- 685. Final judgment and payment.
- 686. Value of the land—how estimated.
- 687. Consequential damages.
- 688. Overseer may be fined.
- 689. Altering or obstructing public roads.
- 690. By a fence or tree.
- 691. Main streets in towns or cities.

§ 638. All roads laid out for public use by an act of the Gen- Public roads.
eral Assembly, if not otherwise provided, or by an order of the
Justices of the Inferior Court, are declared to be public roads.

§ 639. They shall be cleared of all trees, stumps, grubs, and
bushes, at least thirty feet wide, and of such limbs of trees as Shall be
may incommode horsemen or carriages; stumps must be cut as thirty feet
wide.

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nearly even with the surface as possible, and the carriage track must be at least five feet six inches wide.

§ 640. All bridges or causeways over small water courses, and causeways over swamps or low lands, shall be made and kept in repair by hands subject to work on roads; the pieces shall be laid across the road at least sixteen feet long, well secured, made fast, and covered with earth.

Bridges
and cause-
ways.

Shall be
sixteen feet
wide.

§ 641. The Justices of the Inferior Court must lay off their respective Counties into road districts, and apportion the roads and hands so as to divide the labor and expense on account of roads, causeways, and bridges, equally throughout said Counties; all of which proceedings must be entered on the minutes.

Road dis-
tricts laid off
and hands
apportioned.

§ 642. They must cause their Clerk to keep registered, in a book in his office, a list of all public roads and road districts in the County, to be added to and corrected from time to time, as new roads or new districts are laid out, or old ones altered or discontinued.

Public
roads and
road districts
to be regis-
tered.

§ 643. On application to them for any new road, or alteration in an old road, they shall appoint three Road Commissioners, residing as near where such road is intended to pass as possible, and if they find it of public utility they must proceed to mark it out, and make their report under oath to such Justices that it was laid out and marked conformably to law.

Public
roads—how
laid out or
altered.

§ 644. If such Justices, on the investigation had, are willing to grant such road, or make alteration in an old road, they shall cause the Clerk to publish a citation for thirty days at the door of the Court House, and in a public gazette, if there is one in the County, giving a particular description of the new road, or the alteration, notifying all persons that on and after a certain day therein named, said new road or alteration will be finally granted, if no good cause is shown to the contrary.

Notice of
application
must be ad-
vertised for
thirty days

§ 645. All persons, their overseers or agents, residing on land which such road goes through, except the applicants for the road or alteration, must be at the same time notified in writing, personally, or by leaving it at their most notorious place of abode, that they may put in their claim for damages, or forever after be estopped.

Persons in
possession to
be notified.

§ 646. All public roads established without a substantial compliance with the provisions of the last named Sections, are void.

Void roads.

§ 647. Applications for the discontinuance of an old road, in

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whole or in part, must likewise be made to such Justices in writing, and likewise published, before it shall take effect.

Application must be in writing.

§ 648. All public roads shall be laid out the nearest and best way to the place to which they are intended, and as little as can be to the prejudice of any private person's enclosed grounds.

Must be laid out the nearest and best way.

§ 649. [All male inhabitants, white and black, in this State, between the ages of sixteen and fifty years, are subject to work on the public roads, except ordained or licensed ministers or preachers of the gospel, professors of any college, or teacher of any County or public school in this State, so long as they are engaged in teaching, and such other persons as are specially exempted.] (a)

Persons subject to do road duty.

§ 650. The same road hands shall not be compelled to work on more than one public road, which must come within three miles of their residence, except in opening a new road, when all the road hands of the road district are subject to work upon it.

On what road hands compelled to work.

§ 651. Road hands are not required to work exceeding five days at one time consecutively, nor more than fifteen days altogether, in twelve months, unless sudden emergencies require the immediate repairing of the roads, causeways, and bridges within their respective districts.

Not required to work more than five days.

§ 652. The several managers or employers of male [persons of color] (b) shall, whenever required, furnish the overseers of the road district, with a list, in writing, of those who are liable to work on the public roads, signed by them, under a penalty of paying three dollars for each male [person of color] (b) so liable to road duty and whose names are not furnished, to be collected as fines for not working the road.

A list of hands to be furnished.

Penalty for refusing.

§ 653. Overseers of roads in their respective districts shall summon all persons liable to road duty within the district, at least one day before the time of working.

Hands to be summoned one day.

§ 654. Such summons must state the road to be worked, the time and place for meeting, and the implements required.

What the notice must contain.

§ 655. Such overseers shall superintend the working on the roads assigned them by the Commissioners, cause the same to be worked and repaired in the best possible manner, and make a return thereof to the Commissioners in writing, within five days after each time of working, of all defaults and deficiencies which may have taken place.

Overseer—his duty.

Defaulters to be returned.

(a) Acts of 1865-6, pp. 23 and 78, and Acts of 1851-2, p. 282. (b) Acts of 1865-6, p. 23.

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§ 656. When any road, or bridge, or causeway, may become suddenly impassable, it is the duty of such overseer to call out as many hands as necessary to repair the same, after giving one day's notice.

Roads, etc., suddenly becoming impassable.

Time of special working to be deducted.

§ 657. They shall take notice of the time such hands are employed on such special workings, and shall excuse them from road duty an equal number of days out of the whole number all hands are required to work during the year.

Defaulters to be fined not less than \$1 nor more than \$3.

§ 658. Every individual liable to road duty who, being duly summoned to work, shall neglect to obey such summons, and to carry the implements as ordered, or, appearing with or without the implements, neglects or refuses faithfully to work, [shall be fined] (a) not less than one nor more than three dollars for every day he or they fail to work, [or be imprisoned at the discretion of the Commissioners.] (a)

Extraordinary implements—how obtained.

§ 659. If any other instrument than ordinary farming tools are necessary to keep the road in repair, the overseer may receive them in exchange for the labor of hands, or may apply to the Justices of the Inferior Court, who may authorize him to contract for such as may be necessary, and pay for the same out of the County Treasury.

Public roads may be appointed to applicants.

§ 660. When a person liable to road duty makes an application to the Road Commissioners for a proportion of road for himself and hands to work on and keep in repair, they shall parcel off to each applicant some equal and just portion of said road, to be increased or diminished according to the number of hands, and to be judged of by the Commissioners.

Duty of persons taking a portion of the road to work.

§ 661. Persons to whom portions of roads are thus apportioned must make annual returns to their respective Commissioners, whenever they require them, of the number and names of their hands liable to road work, and after they have received and put in good repair their respective portions, such hands shall not be transferred to any other part of the road, or compelled to do any other road work, so long as they perform their work satisfactorily to the Commissioners.

Persons refusing to accept a portion of such roads.

§ 662. If the applicants do not accept the portion of road assigned them by the Commissioners, they must still work in common with the other hands of their road districts.

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§ 663. If, after having accepted such portions, they neglect to keep them in good repair, they are liable to all the penalties and forfeitures to which Commissioners are liable for neglect of duty, besides the usual road fines on the hands.

Penalty for failing to keep such portion up.

§ 664. If such Commissioners assign any person a portion of road thus to work, which, taking into consideration his number of hands as compared to the number liable to do road duty on such road, is not an equal share of the labor, any white male road worker of the same road and district may complain to the Justices of the Inferior Court at any time, and on giving such person three days' notice thereof in writing, such Justices may summarily hear all the evidence, and if they believe the complaint is just, they shall revoke such grant by the Commissioners, and so have them instantly informed by their Clerk.

Complaint against commissioners.

Three days' notice

§ 665. All defaulters must file their excuses, if any, on oath before the Commissioners, who must meet at some place within the district for fining defaulters, of which place of meeting they shall give ten days' notice, in writing, at one or more of the most public places in the district, and no other notice shall be necessary.

Defaulters may file excuse.

Commissioners must give ten days' notice.

§ 666. Such Commissioners must issue executions under their hands and seals [or their warrants of arrest, as the case may be,] (a) against each defaulter who fails to render a good excuse, directed to any lawful Constable, who shall levy and collect the same as executions issued from the Justices' Courts [or, as the case may be, arrest the defaulter and bring him before the Commissioners to abide the judgment of the same.] (b)

Executions against defaulters.

§ 667. When such *fi. fas.* or warrants are collected within ten days thereafter, the amounts must be paid to any one of the Commissioners, one-half of which shall be paid to the overseer having had charge of the hands fined; the other half to the County Treasurer, to be used in the building or repairing of bridges.

Fines—how disposed of.

§ 668. If Constables neglect their duty in collecting such *fi. fas.*, or fail to pay over the money, [or fail to make such arrests and bring the parties arrested before the Commissioners, they shall be subject to rule and suit at the instance of such Commissioners, as though the *fi. fas.* or warrants had issued from a Justice's Court. In all cases where executions may be issued against road hands in the employment of others, notice to the employer

Constables may be ruled

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of the existence of such execution shall have the force and effect of a garnishment, and shall operate as a lien on what is due or to become due from such employer to such employee, and may be collected as in cases of garnishment.] (a)

§ 669. The liens of such judgments are the same as any other judgment, and claim according to their priority in the distribution of money, except that no property is exempt therefrom, and if illegalities or claims are interposed, they must be returned as though issued from a Justice's Court in which the road district is situated in whole or in part.

§ 670. Overseers are authorized to make use of any timbers for the use of the roads, and may make contracts with owners of land for other timber, if indispensable, and if they disagree as to the value, the overseer shall appoint one arbitrator and the owner another, who, without further formality, shall assess the value, and if they disagree, to call in an umpire, whose decision is final. The valuation so awarded must then be reduced to writing and signed by the arbitrators, and upon the production of the same, with a certificate of the overseer that he used the timber assessed, must be allowed by the Justices of the Inferior Court and paid out of the County Treasury.

§ 671. They shall measure all that part of the road to which they may be appointed, beginning at the Court House, and at the end of each mile set up a post or mark on some conspicuous place, which shall designate the number of miles from thence to said Court House; and the overseer in the next adjoining district shall likewise begin to measure and mark at the last mile post in the district thus measured; but when such district shall end at some County line, he shall, by some post or mark, designate the distance from such County line to their respective Court Houses.

§ 672. They shall, at the fork of each public road, place, in some substantial and conspicuous manner, a board or other mark, designating thereon the most public place to which each road directs; and if any road is altered so as to make the fork at some other place, or as not to make necessary such sign-boards, they shall be removed and replaced, or either, if necessary.

§ 673. If any overseer fails to comply with the provisions of

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the two immediately preceding Sections, he forfeits not exceeding fifty dollars, to be imposed and collected as other fines against him.

Overseer failing to put up posts and boards.

§ 674. If any overseer omits to do his duty with respect to the roads, bridges, and causeways under his charge for as much as thirty days from the time the necessity for any immediate work occurs, unless hindered by extreme bad weather or other providential cause, he shall be indicted for a misdemeanor, and, on conviction, shall be fined or imprisoned, at the discretion of the Court, and is also liable for all damages at the suit of any person injured by such omission.

Overseer failing to do his duty.

May be indicted.

Liable for damages.

§ 675. Hands liable to road work employed as laborers on the line of any railroad of this State belonging to an incorporated company, or by any contractors constructing railroads, are exempted from work on the public roads, *provided* the public road overseer having charge of them respectively is paid [two dollars and fifty cents] (a) per day for each hand so liable, which money shall be expended in hiring hands to work on the roads.

Railroad hands exempt by paying \$250 per day.

§ 676. When any person shall feel aggrieved by any road proposed to be laid out through any of his land, unless otherwise provided in the charter thereof, or some special law, he may petition in writing the Justices of the Inferior Court, either of whom shall direct their Clerk to issue a warrant under his hand, directed to the Sheriff of the County, to summon from the vicinage a jury of freeholders to try such question of damage, who shall be sworn by some Justice of the Peace to truly and impartially assess any damage the owner will sustain by means of such new or altered road, and said Justice shall preside over their deliberations.

Land holders aggrieved—how redressed.

Trial by jury.

§ 677. No person is competent as a juror who claims any damage of the County or person for the same or any similar road, or who would be disqualified if the trial was before the Superior Court.

Incompetency of jurors.

§ 678. The jury shall inspect the road and land in person, unless already familiar with them, and swear any witnesses that the owner or any person on the part of the County may offer, as to their opinion of the damages sustained.

Trial—how conducted.

§ 679. The Sheriff shall notify the Justice of the Peace and the Road Commissioners of the district where the road lies, and the owner of the land, the day and place of trial, and shall notify

Justices and Road Commissioners to be notified.

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Land owners and witnesses to be notified. to attend then and there, as witnesses, any persons he may be requested to by such Commissioners, or the owner.

§ 680. He shall fix the time and place, the time not less than five nor more than twenty days, and the place as near the land as the proper house-room can be obtained.

Objections to jurors. § 681. At the trial any person in interest may object to the impanneling of any juror for cause, and if from this or any other cause there are not twelve jurors impaneled and sworn, the Sheriff must proceed to procure tales jurors.

Trial may be postponed. Justice failing to attend. § 682. The trial may be postponed or continued from day to day until completed, and if the Justice of the Peace summoned to attend should fail to preside, the Sheriff must supply the vacancy, if necessary, from some other district.

Mistrial. § 683. If a mistrial occurs the Sheriff shall proceed *de novo* to summon other jurors, and all the proceedings shall be as at first, and so on until there is a verdict.

Certiorari. § 684. The judgment in such cases may be *certiorated* by the County or the owner of the land, as in *certiorari* from forcible entry and detainer trials, and if a new trial is ordered, they shall proceed to procure a trial as previously.

Final judgment. Damages—how paid. § 685. When such judgment becomes final, all the papers appertaining thereto must be filed in the Clerk's office of the Inferior Court; the Justices thereof must grant an order for the damages assessed in favor of the land owner, but if such Justices are satisfied that such damages transcend the utility of such road, or that part of it, they may revoke the road altogether, or order the same altered so as to avoid the land so damaged, or make the owner an offer of such compensation as they may think just.

Value of land—how estimated. § 686. In estimating the value of land when taken for public uses it is not restricted to its agricultural or productive qualities, but inquiry may be made as to all other legitimate purposes to which the property could be appropriated.

Consequential damages. § 687. Prospective and consequential damages resulting therefrom may be also taken into consideration, if the same are plain and appreciable, and on the other hand the increase of the value of the land from the proposed public improvement may be considered, but in no case shall the owner be deprived of the actual damages by such estimated increase.

Overseer neglecting duty, etc. § 688. If any overseer, within twelve months after his appointment neglects faithfully to discharge the duties required of him,

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he is subject to a fine not exceeding fifty dollars by the Commissioners under whom he serves, who shall notify him of his neglect, and unless a good excuse is rendered to them within twenty days from the time of such notice they shall issue execution for the fine assessed.

Fine imposed and collected.

§ 689. If any person shall alter any public road or cut any ditch across, or alter the location of any bridge, or make any new bridge necessary by his act, without first obtaining an order therefor, he is guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five nor more than one thousand dollars, and shall be liable besides, by suit, for all damages any person may sustain thereby.

Altering or obstructing public road.

Fines not less than \$25 nor more than \$1000.

§ 690. When any person shall make any fence or cut any tree, or make other like obstructions in or across any public road, which is not removed in two days and a safe and convenient way, at the time of the obstruction, made for travelers, he shall pay a fine of twenty dollars for each obstruction, to be recovered by execution issued by the Commissioners, as in cases of road fines, and shall be liable for any damages caused by the obstruction, from the first to the last, if the person injured used ordinary caution.

Obstructions by a fence or tree, if not removed.

Fine \$20 for each offense.

§ 691. And when the main streets of an incorporated town or city continue in a state of neglect for three months, the Justices of the Peace therein are, by virtue of their office, Road Commissioners, and shall appoint overseers, apportion the hands that would be liable to road duty throughout the town, have the streets worked on, as though they were public roads, and must, in every other respect, perform the duties of Road Commissioners, and for neglect of any other duty, or violation of any of the road laws, are liable to fine as such Commissioners.

Streets in towns or cities neglected for three months, etc.

Justices to act as Road Commissioners.

May be fined for neglect.

ARTICLE II.

COMMISSIONERS OF PUBLIC ROADS.

SECTION.

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- 695. Must be notified within ten days.
- 696. Clerk failing to give such notice.
- 697. Exempt from patrol and militia duty.
- 698. Duty of Commissioners generally.
- 699. Persons exempt from road duty.

SECTION.

- 700. Pay of overseers.
- 701. Proceedings against for neglect.
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- 703. Executions against Commissioners.
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- 705. Necessary books shall be furnished.
- 706. Certificate of discharge.

Article 2.—Commissioners of Public Roads.

§ 692. There shall be three Commissioners for each road district, any two of whom may act, and in case there is only one in a district, that one is invested with all the powers of the three until the vacancies are filled.

Three Commissioners for each district—two may act.

§ 693. Such Commissioners are appointed or re-appointed by the Justices of the Inferior Court, biennially at their first meeting of the years of the appointments, and, whenever necessary, to fill vacancies at any time.

Commissioners—how appointed.

§ 694. Those thus appointed are compelled to serve, unless excused by such Justices, who shall receive for such excuse provisional cause only.

Compelled to serve.

§ 695. As soon as appointed, they shall be notified thereof in writing within ten days thereafter by the Clerk of the Inferior Court, and if such appointees do not, within ten days after receiving such notice, file their excuse in writing, under oath, in such Clerk's office, they shall be considered as having accepted.

Must be notified in writing within ten days.

§ 696. If a Clerk fails to give such notice, he is guilty of a contempt, and shall be by such Justices fined twenty dollars for each neglect.

The Clerk failing to notify Commissioners.

§ 697. Such Commissioners, while in office, are exempt from all jury, patrol, militia, and other road duty.

Road Commissioners exempt, etc.

§ 698. It is their duty—

Commissioners must appoint overseers.

1. To appoint, within fifteen days, one or more persons in their respective districts as overseers of the road.

Apportion the roads.

2. To apportion the roads and hands under their charge at the same time as equally and fairly as possible, and to furnish the several overseers with a list of the roads and hands under their respective charge.

Try defaulters.

3. To hear and determine upon all cases of default or other violation of the road laws within their jurisdiction (if not indictable only) at a Court to be held by them twenty days after every road working, or as often as emergencies may require, and to issue executions or other process against the convicted.

4. To keep a book in which to enter—

Names of road hands to be registered.

First. The several hands in their respective districts subject to road duty; to what roads and what parts thereof assigned, and under what overseer; changing and correcting it from time to time, as may be necessary.

Second. A list of all defaulters and persons fined, the amounts

Article 2.—Commissioners of Public Roads.

fined, amounts paid, what disposition made of the money, what executions issued and unpaid.

A list of defaulters, etc.

5. To pay to the County Treasurer, as soon as collected, that portion of the fine money belonging to the County, to be used in the repairing or building of public bridges and causeways, and annually, on the first of December, to report to the Justices of the Inferior Court the condition of the public roads and bridges in their respective districts, the state of the finances, what executions are outstanding unpaid, and their condition.

Disposition of money raised from fines.

The condition of public roads, bridges, etc.

6. To inspect, from time to time, the public roads, bridges, and ferries within their districts, notice the character of the repairs, and observe if such road is regularly posted and direction boards put up as required by law, and if said bridges and ferries are in proper repair.

Roads, bridges, and ferries to be inspected.

7. To exercise a general supervision over their respective overseers, and to fine them for neglect of duty, and to see that persons are indicted for the offenses set forth in the road laws.

Commissioners' general duty.

8. To administer all oaths, relative to the road laws, connected with their duties.

§ 699. In making up the list of road workers, they must not include the following description of persons, who are exempt from such duty—viz: Licensed ministers, teachers and students of colleges and schools, keepers of public grist mills, public ferrymen, keepers of toll bridges, turnpikes, causeways, and plank roads, engineers and white persons in charge of cars or trains running on railroads, officers of the United States, this State, or any County thereof, and all others exempted by any special law.

Ministers, teachers and others exempt from road duty.

§ 700. They are authorized to pay overseers one-half of the fine money as compensation to him as informer.

Overseer of roads paid as informer.

§ 701. [Whenever the Grand Jury in any County in this State shall present any Road Commissioners for neglect of duty generally, or in any particular, it shall thereupon be the duty of the Clerk of the Court to issue a summons in writing, directed to such Commissioners, commanding them to be and appear at the next term of the Superior Court in which the presentment is made, to answer the accusation of the Grand Jury, which said summons shall be served by the Sheriff upon the Commissioners at least twenty days before the Court to which the same is returnable; and if, upon the investigation of the case, it shall appear that the accusation is made out by the proof, the Judge shall thereupon impose upon

Proceedings against commissioners for neglect of duty.

Article 2.—Commissioners of Public Roads.

such Commissioners a fine of not less than fifty dollars nor more than two hundred dollars.] (a)

§ 702. If they have been duly cited and served, and fail to appear, the Court may proceed *ex parte*.

Execution to issue by the Clerk of the Inferior Court. § 703. The Clerk of the Court is directed to issue executions against them for the fine and costs, which shall be executed by the Sheriff. The lien of such executions, and the property subject thereto, are the same as those against defaulting road workers.

A public road being a district line. § 704. When any public road may be on a road district line, and the Justices of the Inferior Court have not specially assigned it to any particular district or set of Commissioners, the Commissioners of each district shall co-operate in arranging the hands and appointing the overseers for such road.

Books shall be furnished by Inferior Court. Shall be deposited in Clerk's office. § 705. The books such Commissioners are required to keep must be furnished by the Justices of the Inferior Court at the expense of the County, and out of the road money, if any, and when full must be deposited in the office of the Clerk of the Inferior Court.

Certificate of discharge—by whom granted. § 706. After the Commissioner has faithfully served through the term of his appointment, he may obtain from the Clerk of the Inferior Court a certificate of such fact.

ARTICLE III.

BRIDGES, FERRIES, TURNPIKES, AND CAUSEWAYS.

SECTION.

- 707. Public ferries, bridges, etc.
- 708. Regulations concerning the same.
- 709. Erected for benefit of the County.
- 710. Power and duty of Inferior Court.
- 711. Condition of contractors' bond.
- 712. Bond must be approved.
- 713. Additional bond may be required.
- 714. Roads, bridges, etc.
- 715. Contractor failing.
- 716. Defendant resisting payment.
- 717. Contractors incompetent as jurors.
- 718. Bridges, etc., crossing County lines.
- 719. County refusing to contribute.
- 720. Toll bridges crossing County lines.
- 721. Private bridges, etc.
- 722. Distance in such cases.
- 723. Rates of toll to be posted up.

SECTION.

- 724. Land owner may erect a bridge, etc.
- 725. Excessive rates shall not be charged.
- 726. Rates to be examined annually.
- 727. Persons making excessive charges.
- 728. Fords, bridges, etc.
- 729. Public bridges, etc.
- 730. Proprietors liable for neglect.
- 731. County—when liable for damages.
- 732. Persons detained at public crossings.
- 733. No toll after expiration of charter.
- 734. Owner of private ferry, etc., liable.
- 735. Breaking toll gate, etc.
- 736. Right of way.
- 737. Grant to land—what passes.
- 738. Grant for a ferry.
- 739. Value of land taken—how.

Article 3.—Bridges, Ferries, Turnpikes, and Causeways.

§ 707. All bridges or ferries, turnpikes or causeways, erected or permitted by any act of the General Assembly, if not otherwise provided, or by order of the Justices of the Inferior Court, for public purposes, are declared to be public.

Public
bridges, fer-
ries, cause-
ways, etc.

§ 708. They are divided—

1. Those established by the County which are free to every one.

Bridges,
ferries, etc.

2. Those established by the County where toll is charged generally or specially.

3. Those established by individuals under the authority of law or by virtue of a prescriptive right.

4. Those established by individuals without such rights, who accommodate the public or any portion of them for compensation.

§ 709. The Justices of the Inferior Court may put a ferry or causeway, or both, or may establish a toll bridge for the benefit of the County; but when on any such County bridge, ferry, or causeway, toll is charged, the County is liable as individuals owning them, and the owners of lands must be compensated as in other cases.

Justices In-
ferior Court
may estab-
lish for bene-
fit of County.

§ 710. The Justices of the Inferior Court of the several Counties have authority—

Power of In-
ferior Court
over public
bridges, fer-
ries, cause-
ways, etc.

1. To appoint the places for the erection of public bridges, County ferries, turnpikes, and causeways, and to make suitable provision for their erection and repairs by letting them out to the lowest bidder, hiring hands, or in any other way that may be for the public good and agreeable to law.

2. To require sufficient bond and good security for the faithful performance of all such works and contracts, and to indemnify for all damages occasioned by a failure so to do.

Undertaker
to give bond.

3. To license any person to establish such bridge, ferry, turnpike, or causeway, not exceeding ten years, which may be renewed at the expiration thereof.

License to
establish.

4. To fix the rates of toll for crossing any such where the toll can lawfully be charged, and regulate those previously established or that may afterwards be established, so as to conform to what is both reasonable and usage on such water courses, provided such charges are not specially regulated by the General Assembly in some act of incorporation to the exclusion of such Justices.

Rates of toll
to be fixed.

5. To exercise a general supervision over such, and see that

Article 3.—Bridges, Ferries, Turnpikes, and Causeways.

General supervision over public bridges, ferries, etc.

they are kept in proper order and properly attended to, and to require from time to time, as the occasion may demand, sufficient bond and good security from the proprietors thereof, conditioned for their keeping in repair a sufficient and safe bridge, flat rope, turnpike, or causeway, and all other appointments necessary for a good ferry and competent and faithful attendance by day and night, and to indemnify the public against all damages by reason of a failure so to do.

Condition of the bond of contractors.

§ 711. When a public bridge, ferry, turnpike, or causeway, is let out, the contractor must, in his bond, make a condition also to keep it in good repair for at least seven years, and as many more years as the contract may be for.

Bond must be approved.

§ 712. All bonds taken from contractors or proprietors must be approved by the Justices of the Inferior Court, filed in the office of the Clerk of the Inferior Court, and by him recorded in books kept for that purpose.

Additional bond may be required.

§ 713. If when an additional bond is required, it is not given within ten days from the time the proprietor, or his agent, is notified by the Clerk of the Inferior Court, the license must be revoked.

Roads, bridges, etc., to be kept in repair.

§ 714. When any such work shall require repairing, it is the duty of any one or more Road Commissioners in whose road district the same is, to give notice in writing to the contractor, or one of his sureties, stating the repairs necessary to be made, and requiring them to be done within a reasonable time, stating the time.

Repairs—by whom to be made.

Contractor failing, execution may issue against him.

§ 715. If such repairs are not made within the time required, they shall employ some other person forthwith to make them, and upon report to the Clerk of the Inferior Court of their cost, he shall issue an execution against such contractor and his sureties for the expense of such repairs and the costs.

If defendant resists payment of such execution, how tried.

§ 716. If the defendant resists the payment of said execution at law, it must be returned for trial by jury, if demanded, either to the Justices' Court of the district where the defendant resides upon whose property the levy is made, or to the Superior Court of the County, according to the principal amount thereof.

Contractors can not be Road Commissioners.

§ 717. Persons who have undertaken the building or keeping in repair any bridge, ferry, turnpike, or causeway, or are surety for such persons, can not be Road Commissioners of the road district which embraces such, and if, after having been appointed,

Article 3.—Bridges, Ferries, Turnpikes, and Causeways.

they become such contractor or surety, the Justices of the Inferior Court must declare a vacancy and appoint some other persons in their stead.

§ 718. When a bridge or ferry is necessary over any water course which divides one County or more Counties from each other, each County must contribute equally toward the building and keeping the same in repair, or in such proportion as would be just, taking into consideration the taxable property of each, and the amount expended by each in the construction of bridges and other passways.

Bridges, etc., crossing County lines to be kept up by such Counties jointly.

§ 719. If any County refuses to undergo its fair proportion of such expenses, the other County or Counties may construct the work, compel the other to contribute by suit, and until such contribution takes place, may have exclusive control thereof, and charge toll thereon against all the citizens of the refusing County.

The remedy when one County refuses to contribute.

§ 720. The toll bridges or ferries over water courses making County lines, may be licensed by either County, and in such cases the bonds must be approved, filed, and recorded in the County where the license is granted.

Toll bridges, etc., crossing County lines may be licensed by either.

§ 721. No private ferry charging toll shall be established on any water course within three miles of where public bridges are previously erected and kept up, but bridges may be erected at the public expense at places on the same stream, other than those where bridges are previously erected, if not violative of any special provision of the law.

No private ferry shall be established within three miles of a public bridge.

§ 722. When exclusive right is granted to any person to prevent others from erecting bridges or ferries, or the like, within a given distance from the same, it shall be computed by the course of the stream.

Distance—how computed.

§ 723. Every proprietor of bridges, ferries, turnpikes, and causeways, where toll is allowed to be charged, must fix a board in a conspicuous place, as near the same as practicable, with black ground, on which shall be the various rates of toll; and if such is neglected, he shall be subject to indictment, and, on conviction, shall be fined not less than fifty dollars for every week he so neglects.

Rates of toll to be posted up.

Penalty for neglect.

§ 724. Any person who may be the owner of any land through which a stream may pass, on both sides thereof, may establish any bridge or ferry thereon, at his expense, and may charge lawful toll for crossing, according to the rates of other bridges and fer-

Land owner may construct bridges, etc., on his own land

Article 3.—Bridges, Ferries, Turnpikes, and Causeways.

ries on the same stream, or if none other, the customary rates over such streams elsewhere.

§ 725. If such person shall demand excessive rates, any person may complain to the Justices of the Inferior Court of the County, and if the rates are excessive, they must reduce and fix them.

Excessive rates shall not be demanded.

§ 726. The Justices of the Inferior Court of each County must once each year examine the rates charged in their Counties, and keep fixed the rates of toll for the several bridges, ferries, turnpikes, and causeways within the limits of their County, which have the right to charge them, and must enter the same on their minutes.

Rates to be examined annually.

§ 727. If any person shall charge more than the lawful rates, or more than indicated by the board, he is guilty of a misdemeanor, and on conviction must be fined in the discretion of the Court, and for the second offense, in addition to the fine, he forfeits his franchise.

Persons making excessive charges—how punished.

§ 728. No person authorized to have a bridge or ferry on his own land will be permitted to stop up or obstruct any ford, bridge, or ferry, and upon so doing he is guilty of a misdemeanor, and on conviction must be fined or imprisoned, or both, in the discretion of the Court.

Fords, bridges, etc., not to be obstructed.

§ 729. After a person has once established such bridge or ferry, he shall not discontinue the same without first giving public notice thereof by advertisement posted on the Court House door and in a public gazette, if there is one published in the County, for at least sixty days.

Bridges, etc., not to be discontinued.

§ 730. Any proprietor of any bridge, ferry, turnpike, or causeway, whether by charter or prescription, or without, or whether by right of owning the lands on the stream, are bound to prompt and faithful attention to all their duties as such; and if any damage shall occur by reason of non-attendance, neglect, carelessness, or bad conduct, he is bound for all damages, even if over and beyond the amount of any bond that may be given.

Proprietors liable for neglect.

§ 731. The provisions of the preceding Section apply to all contractors for the establishment of such, when damages accrue from a want of good faith in performing their several contracts, and if no bond or sufficient guarantee has been taken by the Justices of the Inferior Court, the County is also liable for the damages.

On failure to take bond the County is liable for damages.

§ 732. Any person unreasonably detained at a public ferry, toll bridge, turnpike, or causeway, may for each detention recover of the owner ten dollars before any Justice of the County.

Persons shall not be detained at public crossings.

Article 3.—Bridges, Ferries, Turnpikes, and Causeways.

§ 733. If any person demands or receives toll for crossing any ferry, bridge, or causeway, or turnpike, after the revocation of his license or forfeiture of his charter, or, having a right for a ferry, allows the banks on either side to be out of repair for more than five days at any one time, or to provide good and safe boats of a size sufficient for the accommodation of the public, furnished with competent and sufficient ferrymen for the safe and speedy passage of all persons, vehicles, horses, and stock, or, in case of a toll bridge or causeway, fails to keep the same in good repair, without a reasonable excuse for such failures, to be determined by the Court, he is guilty of a misdemeanor, and on conviction must be Persons charging toll after expiration of charter, or failing to keep bank and boats in order. fined Shall be fined \$20. not less than twenty dollars.

§ 734. If any person who keeps a private bridge, ferry, turnpike, or causeway, passes any person for toll, the owners incur the same liability and penalties as those permitted by law. Owners of private ferries liable.

§ 735. If any person break or injure any gate to a toll bridge, turnpike, or causeway, or obstruct, injure, or destroy such bridge or causeway, pass round or under the same with intent to avoid the payment of toll, such person forfeits to the owner ten dollars for each of such acts, and is also liable for the damages. Breaking or injuring gate or avoiding payment

§ 736. Damages for the right of way are to be assessed in the manner prescribed for public roads and private ways. Right of way

§ 737. Grants to land on water courses, with the appurtenances, convey no right of public bridge or ferry. Grants to land.

§ 738. The grant of a ferry franchise conveys no right to build a bridge, or the contrary. Grant for a ferry.

§ 739. In determining the value of land taken for a bridge, its prospective value as a bridge site and its present value as a ferry, if one is in use, may be taken into the calculation. Value of land taken for a bridge—how estimated.

ARTICLE IV.

RAILROAD AND OTHER CROSSINGS.

SECTION.

- 740. Roads at railroad crossings.
- 741. Extent of such crossings.
- 742. Erecting posts and blowing whistle.
- 743. Neglecting to erect such posts.
- 744. Failing to blow the whistle.
- 745. Proof of damage—onus on Company.
- 746. Suits—when to be brought.

SECTION.

- 747. Failing to keep crossings in order.
- 748. Must be done by overseer of Roads.
- 749. Executions against defaulting Co.
- 750. Money raised—to whom paid.
- 751. Railroad company may defend.
- 752. Plank, macadamized and other roads.
- 753. Public highways, bridges, etc.

Article 4.—Railroad and other Crossings.

§ 740. All railroad companies shall keep in good order, at their expense, the public roads or private ways established pursuant to law, where crossed by their several roads, and build suitable bridges and make proper excavations or embankments, according to the spirit of the road laws.

§ 741. Such crossings include the width of land on both sides of the road allowed by charter or appropriated by the Company therefor, and for as many feet beyond, each way, as is necessary for a traveler to get on and off the crossing safely and conveniently.

§ 742. There must be fixed on the line of said roads, and at the distance of four hundred yards from the center of each of such road crossings, and on each side thereof, a post, and the engineer shall be required, whenever he shall arrive at either of said posts, to blow the whistle of the locomotive until it arrives at the public road, and to simultaneously check, and keep checking, the speed thereof, so as to stop in time should any person or thing be crossing said track on said road.

§ 743. Should any company fail or neglect to put up said posts the superintendent thereof shall be guilty of a misdemeanor, and upon indictment and conviction thereof in the County where such failure occurs, shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars.

§ 744. If any engineer neglects to blow said whistle, as required, and to check the speed as required in Section 742, he is guilty of a misdemeanor, and on indictment and conviction in the County where such failure occurs, he shall be punished by fine not exceeding five hundred dollars, and imprisoned not exceeding ninety days, or either, which the company by whom he is employed is bound to pay.

§ 745. When such injury occurs, the *onus* is upon the company to prove such fault on the part of the injured persons.

§ 746. Such suits may be located in the County where the injury occurs, and service perfected as in case for killing stock.

§ 747. When any road over which a crossing is required shall be obstructed, or not in good order at such crossing, a Road Commissioner, or an overseer of the road district where the crossing is, must notify the nearest agent or employee of the company, in writing, to remove such obstructions, or to put such crossing in proper order within thirty days from the date of such notice.

§ 748. If such requisition is not complied with, it must be done

Article 4.—Railroad and other Crossings.

by the overseer of the road, and within five days after he shall have discharged such duty, he must report, under oath, in writing, to the Commissioners of the district, the amount and value of the services performed.

Requisition must be complied with in five days.

§ 749. The Commissioners shall then issue execution, under their hands and seal, directed to any lawful officer, for the amount of such value and the costs of the proceeding against such defaulting railroad company, as in case of other road defaulters.

Execution shall issue.

§ 750. The amount, when collected, must be paid to the persons who performed the labor, *pro rata*, and according to the labor performed by each, and for other expenses of said work, if any.

Money raised—how disposed of.

§ 751. The defendants may defend themselves from such *fi. fas.* as other defaulting road-workers may.

Defenses—how made.

§ 752. The provisions of this article are, so far as applicable, extended to any plank, macadamized, turnpike, or other road, belonging to private individuals or a joint stock company.

Plank and other roads subject to the same provisions.

§ 753. Public highways, bridges, or ferries, can not be appropriated to railroads, plank roads, or any other species of road, unless express authority is granted by some constitutional provision in their charters.

Public bridges, highways, etc.

ARTICLE V.

PRIVATE WAYS.

SECTION.

- 754. Private ways—by whom granted.
- 755. Must be kept open.
- 756. How obtained.
- 757. How laid out—notice of application.
- 758. Damages—how assessed.
- 759. Applicant may decline to open.
- 760. May be established by agreement.
- 761. Protected as public roads.
- 762. Persons may join in opening, etc.

SECTION.

- 763. May apportion work, etc.
- 764. Private way over wild lands.
- 765. Seven years' uninterrupted use.
- 766. Can not be closed after one year.
- 767. Special damages in certain cases.
- 768. When there is but one bluff, etc.
- 769. Application for use of landing.
- 770. Damages omitted in the grant.
- 771. May be converted into a public road.

§ 754. The Justices of the Inferior Court have authority to grant private ways to individuals to go from and return to their farms or places of residence.

Private ways—by whom granted.

§ 755. They must not exceed fifteen feet in width, and must be kept open and in repair by the persons on whose application they are established, and may be as much less as the applicant may choose.

Not more than 15 feet wide.

Article 5.—Private Ways.

§ 756. Any person desiring such passway over the land of another, must petition the Justices of the Inferior Court, setting forth particularly the distance and direction of such road, over whose land it is to go, through what improvements, if any, and their nature, and the special purpose for which it is desired.

§ 757. After all persons over whose land said passway is to be made shall have had twenty days' notice, in writing, of such application, and such Justices shall be satisfied such applicant is entitled to the same, they shall appoint five commissioners, who shall be disinterested persons, any three or five of whom may act, to view and lay out such road, so as to do the least possible damage and inconvenience to the land-owners, who shall make their report within thirty days from their appointment. They shall make out their report in writing, and furnish all the parties in interest with copies thereof; and if either party is dissatisfied with such report, by giving the other five days' notice in writing, he may take an appeal to the Justices of the Inferior Court, who, after having all the evidence, *pro* and *con*, may confirm said report or alter the same, which, when done, shall be final.

§ 758. If the person then, over whose land the passway is, conceives that he will be damaged thereby, he may proceed to have the damages assessed in the same manner that damages are assessed in case of public roads, and the applicant therefor stands in the place of the County and Road Commissioners.

§ 759. After the damages are thus assessed, the person who has them to pay may decline to open the same, but he is bound for the costs of all the proceedings, whether he uses the passway or not, for which the Clerk of the Inferior Court may issue an execution; and in all cases the damages must be paid before the way is opened.

§ 760. Private ways may be established by an agreement in writing of all parties concerned, in which may be stipulated any damages, which must be spread on the road book of the County, and when so done, has the same effect as though established by the forms of law.

§ 761. When a private way becomes established, it must be entered on and fully described in the road book, and the owner thereof is entitled to be protected in the use of the same as a public road.

§ 762. Several land owners may join together in opening a pri-

Article 5.—Private Ways.

vate way, or in keeping it up afterwards, or both; and when so done and entered on the road book, the duties and privileges extend to vendees of the same real estate.

Several land holders may join in opening a way.

§ 763. When several so join, they may apportion the road for work among themselves, or work it under the road laws, selecting one of their number as Road Commissioner, whose powers are the same touching such road and the hands thereof as the three Road Commissioners of the district.

May apportion the work.

§ 764. If a private way is established over the wild lands of a person who has no notice of the proceeding, as soon as he does have such notice, and within six months thereafter, he may proceed to have his damages assessed against all persons who are land owners and are in the habitual use of such private way, and not after.

On wild lands.

§ 765. When a person has laid out a private way, and has been in the use and enjoyment of it as much as seven years, of which the owners have had six months' knowledge, without moving for damages, his right to use becomes complete, and such owners are barred of damages.

Seven years' uninterrupted use.

§ 766. When a road has been used as a private way for as much as one year, an owner of land over which it passes can not close it up without first giving the common users of the way thirty days' notice in writing, that they may take steps to have it made permanent.

Can not be closed after one year without notice.

§ 767. When a private way is established over the land of another for the purpose of hauling wood or timber, or other commodity, to any place of landing whereat the business of rafting or shipping is carried on, or to any railroad depot, it shall not extend to the use of any landing erected by a person for his own benefit.

Special ways

Extent of.

§ 768. If, however, there should be but one bluff or place of landing, the owner can not appropriate such to himself exclusively, if he will not be damaged by the admission of others to its use, or, if damaged, he is properly compensated therefor; but no person shall be entitled to use the wood-slide or other improvement erected for one's own use, nor timber landing, while he is using it.

If there is but one bluff

§ 769. When the applicant for a private way desires also to use another's landing, he must so state in his petition, that proper damages may be assessed therefor.

The use of another's landing.

Article 6.—Mining.

§ 770. If a private way is established and there is an omission to have considered the damages for using such, it may be done afterwards if within a reasonable time.

Omission to assess damages.

§ 771. When a private way is once established, it is in the power of the Justices of the Inferior Court to declare it a public road, provided it is of sufficient length and importance, and the number of persons who habitually use it can and will do as much work thereon as is their proper share, in working the same alone or in connection with adjacent public roads.

May be converted into a public road.

ARTICLE VI.

MINING.

SECTION.

772. Right of way for miners.

773. Return of award.

SECTION.

774. Diversion of water courses.

775. Rendition of award.

§ 772. [In all cases where any partnership, corporation, or individual, may be hereafter actually engaged in the business of mining iron, copper, gold, coal, or any other useful metal or mineral, or in making copperas, sulphur, saltpeter, alum, or other similar articles of utility, and such partnership, corporation, or individual, shall be of the opinion that it is necessary to the successful operation of their works that they shall have the right of way for either a railroad, turnpike, or common road of travel across the land of others, upon failure to agree with the owner of the lands across which such right of way is desirable, to have both the necessity and value of the same settled, as follows: The said corporation, partnership, or individual, shall select one person, the owner of the land another person, and any one of the Justices of the Inferior Court of the County where the land lies shall be the third man, who, together with the two chosen as above provided, shall summon the parties and such witnesses as they may deem necessary to appoint, after reasonable notice, and after fully hearing evidence and reasons on both sides, they shall decide both as to the necessity of the right of way and the value of the same.] (a)

Right of way to mining companies.

Necessity and value—how settled.

§ 773. [They shall return their award to the next Superior Court of the County where the land is situated; whereupon, the

(a) Acts of 1862-3, pp. 171-2.

Article 6.—Mining.

same shall be made the judgment of said Court, binding and conclusive upon both parties, unless then and there set aside for reason now applicable in other cases of arbitration.] (a)

Award to be returned to Superior Court.

§ 774. In all cases where it may be deemed desirable and necessary to divert any water course from its usual channel, for any of the purposes specified in Section 772, it shall be lawful to organize the board of arbitrators, as provided in said Section 772, whose duty in relation to the same shall be to decide both as to the necessity of diverting the water course, and who are damaged, and how much. It shall be the duty of the arbitrators to summon before them all the parties interested in the question, and to return their award to the Superior Court as provided in Section 773, subject to be there set aside for reasons now applicable in other cases of arbitration; otherwise to stand as the judgment of the Court.] (a)

May divert water courses.

Assessment of damages.

§ 775. [It shall be the duty of the arbitrators in all cases arising under the provisions of this Article to make return of their award on the first day of the Superior Court held thereafter, in the County where the same is awarded; and at such time all and any of the parties affected thereby shall have the right of appeal to said Superior Court, *provided* such appeal is entered within four days from the time said award is filed; the said appeal to be entered and disposed of under the same rules and regulations which now govern other cases of appeal.] (b)

Reports of award and right of appeal.

Appeal—how disposed of.

CHAPTER VI.

THE COUNTY POOR.

SECTION.

- 776. Paupers.
- 777. Poor House.
- 778. Pauper farms.
- 779. Tax to buy farms.
- 780. Regulation of farms.
- 781. Workshops, etc.
- 782. Commissioners of the Poor.
- 783. Receipts, disbursements, amounts.
- 784. Applications by the poor, etc.
- 785. Who are considered paupers.

SECTION.

- 786. Parents and children bound, etc.
- 787. Certificate of the Clerk.
- 788. Burial of paupers.
- 789. Persons removing paupers.
- 790. Such persons being insolvent.
- 791. Paupers left by companies, etc.
- 792. Security required, etc.
- 793. Bond filed with Clerk Inferior Court.
- 794. Party failing to give security.
- 795. Pauper found to be a lunatic.

§ 776. The general supervision of all paupers is vested in the Justices of the Inferior Court of each County.

Paupers.

(a) Acts of 1862-3, pp. 171-2. (b) Acts of 1862-3, pp. 171-2.

Chapter 6.—The County Poor.

§ 777. They have authority to purchase lands for a Poor House, the title thereto vesting in the County, or to rent improvements for such purpose, or to board out the poor and to make all necessary contracts in relation to them.

§ 778. [Upon the recommendation of the Grand Juries of their respective Counties, said Justices shall have power and authority to purchase a house and farm in their respective Counties, upon which farm they may require all paupers in said Counties to labor who are not, from old age and disease, unable to work.] (a)

§ 779. [The said Justices have authority to lay and collect a tax for the purpose of purchasing said house and farm.] (a)

§ 780. [They are also authorized to establish all necessary rules and regulations in the management of said farms.] (a)

§ 781. [They are further authorized to establish any workshops, any school-houses, or churches on said farms, as they may deem proper, and may do any and every thing necessary to be done, in carrying out the provisions of this and the three Sections immediately preceding it.] (a)

§ 782. They shall, if necessary, appoint a Commissioner of the Poor, and the money arising from the poor tax shall be paid into his hands by the County Treasurer on orders granted in his favor by such Justices, or in favor of any other person.

§ 783. Whoever receives and disburses such fund must once in every year, at the time such Justices may order, or oftener if they require, make up his accounts and lay the same before them, who shall allow or disallow, and whenever there is a deficiency or liability on the part of such person he may be ruled for the amount as an officer of Court.

§ 784. Application to be provided for as a pauper may be made at any time to the Commissioner of the Poor, a Justice of the Inferior Court or a Clerk of such Court, upon which a hearing must be had, with the least possible delay, by the Justices, and the person to whom such application is made is authorized to provide for such applicant as other County poor until the hearing is had.

§ 785. No person shall be entitled to the benefits of the provision for the poor who is able to maintain himself or herself by labor, or if not, has sufficient means, and in cases where females

Chapter 6.—The County Poor.

are unable to maintain themselves and the helpless children they may have also, they may be aided to the extent required in the furnishing of food, clothing, or shelter.

§ 786. If any such person has father, mother, or child of sufficient ability, he or she must be supported by them, and failing so to do, any County in the State, having made provision for such persons, may sue persons of full age standing in such relation to them, and recover for the time such County has made provision for such person; always provided, the person sued was possessed of such ability.

Parents and children bound to support each other.

§ 787. On the trial the certificate of the Clerk of the Inferior Court that the person was poor and unable to sustain himself, and that he was maintained for such a time at the expense of the County, is presumptive evidence of such maintenance and the costs thereof.

Certificate of the Clerk evidence.

§ 788. [Whenever any free white person shall die in this State, whose family and immediate kindred are indigent and unable to provide for the decent interment of such deceased person, and where the deceased is a pauper, and destitute of the means of paying for a decent interment, the Justices of the Inferior Court of the County where said death shall occur are authorized, and it is hereby made their duty, in case there be any pauper funds belonging to the County unexpended, to appropriate a sufficient amount thereof to provide a decent interment for such deceased pauper; or to reimburse such person as may have expended the same voluntarily; said appropriation not to exceed what is necessary to defray the ordinary funeral expenses of persons dying in humble circumstances in this State.] (a)

Paupers—how buried.

Amount of appropriation.

§ 789. When any inhabitant of any County, city, town, or village, in or out of the State, sends a pauper to some County in this State, by paying the expense of transportation, or otherwise has him removed for the purpose of burdening some other community, the person so engaged shall be personally liable for the support of the pauper in the County where he locates.

Persons removing paupers personally responsible.

§ 790. If the person so engaged in transporting a pauper is insolvent or does not respond to such demand from any cause, the County from which the transportation took place shall be liable.

Such person being insolvent the County is liable.

§ 791. If any person commanding any vessel, or the manager

Chapter 6.—The County Poor.

Paupers left or proprietor of any theatrical circus, or any other migratory company, or their agents, or any person passing or moving through this State, shall bring and leave or abandon herein, any infant, lunatic, maimed, deaf and dumb, blind, aged or infirm person, who is or is likely to become chargeable to the County, he may be brought by warrant before any judicial officer.

§ 792. If such officer is satisfied that such person is or will probably become such charge, he must require such person to enter into bond, payable to the Governor of the State and his successors in office, with sufficient securities, resident in the State, for the sum of five hundred dollars, for each of such persons so brought, conditioned to pay all such expenses, as any County in the State may lawfully incur in their support.

§ 793. Said bond must be filed in the Clerk's office of the Inferior Court of the County where the paupers are at the time of its execution, and upon condition broken may be sued on and recoveries had, until exhausted in different actions in behalf of any County or person who may have properly contributed to the maintenance of such pauper.

§ 794. On failure to give such bond, such person must be committed to jail until it is done, or until the next term of the Superior Court of the County, when, if not done, or he does not take care of said pauper and pay all costs, he is guilty of a misdemeanor, and, on conviction, shall be fined five hundred dollars, and, in default thereof, shall be imprisoned ninety days.

§ 795. When a pauper is found to be a lunatic, idiot, deaf and dumb, or blind, they must be dealt with according to the laws relating to them.

TITLE VII.

PUBLIC REVENUE.

CHAPTER I.

TAXATION BY THE STATE.

- ARTICLE 1.—*Persons and Property Exempt.*
 ARTICLE 2.—*System of Taxation—Persons and Property Taxed.*
 ARTICLE 3.—*Taxes on Banks, Railroads, etc.*
 ARTICLE 4.—*Taxes—how Returned and Collected.*
 ARTICLE 5.—*Proceedings against Delinquent Tax Payers.*
 ARTICLE 6.—*Delinquent Collectors and Receivers, etc.*
 ARTICLE 7.—*Tax Receivers.*
 ARTICLE 8.—*Tax Collectors.*
 ARTICLE 9.—*Compensation of Collectors and Receivers.*
 ARTICLE 10.—*Miscellaneous Provisions.*

ARTICLE I.

PERSONS AND PROPERTY EXEMPT.

SECTION 796. Persons and property exempt from taxation enumerated.

§ 796. The following persons and property are exempt from taxation: Property exempt from taxation.

1. All property specially exempted by the Constitution of the United States or of this State.
2. All lands, mines, and minerals belonging to this State or the United States.
3. All buildings erected for and used as a college, incorporated academy, or other seminary of learning.
4. All buildings erected for and used for public worship, or for school houses, or both.
5. All Court Houses, Jails, or other County buildings.
6. [All public buildings owned by any incorporated city or town in this State.] (a)

(a) Acts of 1862-3, p. 180.

Article 1.—Persons and Property Exempt.

7. All poor houses, alms houses, houses of industry, and any house belonging to any charitable institution.

8. The real and personal estate of any public library, and that of any other literary association.

9. The several lots and buildings attached to the five last mentioned exemptions, including all necessary furniture belonging to each.

10. All books and philosophical apparatus, and all paintings and statuary of a company or association kept in a public hall, not held as merchandise or for the purpose of sale.

11. All stocks owned by the State, or by literary or charitable institutions, for the legitimate purpose of such.

12. All plantation and mechanical tools, and all household and kitchen furniture, not above the value of three hundred dollars, not held for sale or as merchandise.

13. All poultry, and two hundred dollars in value of other property, besides the special exemptions, but which latter do not obtain in favor of non-residents.

14. All annual crops and provisions, all fire-arms and all munitions, and all wearing apparel not held as merchandise.

15. All owners of stocks in any incorporated company liable to taxation on its capital for such stock shall not be taxed as individuals. As to County tax, see Section 488.

Stockholders—when exempt.

16. All places and monuments of the dead and implements of burial.

17. The property of revolutionary soldiers and their widows, to the value of one thousand dollars.

ARTICLE II.

SYSTEM OF TAXATION, AND PERSONS AND PROPERTY TAXED.

SECTION.

- 797. Taxable property—what.
- 798. Bonds, notes, and other obligations.
- 799. Lands held by warrant or ungranted.
- 800. Lands, etc., held by non-residents.
- 801. Taxable property—assessments.
- 802. Assessments—when and by whom.
- 803. Amount of taxes to be assessed,
- 804. Tax—in what funds to be paid.

SECTION.

- 805. Default and insolvent list.
- 806. Specific taxes—items enumerated.
- 807. Property specifically taxed, etc.
- 808. License to exercise a privilege.
- 809. Taxes to be paid before other debts.
- 810. Conveyances and judgments, etc.
- 811. Person to whom conveyance is made.

§ 797. All real and personal estate, whether owned by individuals or corporations, resident or non-resident, are liable to taxation, unless specially exempted.

Taxable property.

Article 2.—System of Taxation, and Persons and Property Taxed.

§ 798. Bonds, notes, or other obligations for money, on persons in other States, or bonds of the United States, or of other States, or bonds of corporations of other States, and shipping, are the subjects of return and taxation in this State.

Bonds, notes, etc., of non-residents, bonds of other States, etc. may be taxed.

§ 799. All lands held under warrants and certificates, but not granted, are liable to taxation, and all monied or stock corporations, unless exempted or differently provided for in their charters, are liable to taxation upon such capital stock as other property.

Ungranted lands and stock corporations.

§ 800. Lands or other property belonging to citizens of the United States, not resident of this State, can not be taxed higher than the property of residents, but all the property of such non-residents, whether their property be real or personal, in this State, must pay taxes on the same herein.

Non-resident owners subject to same tax as citizens.

§ 801. All property, or other thing of value subject to taxation, must be given in by the tax payers as hereinafter set forth, at its fair market value, and must be taxed according to its value on an assessment to be made by the Governor, which must not exceed one-eighth of one per cent. per annum, without the assent of the General Assembly.

Taxable property to be assessed *ad valorem*, and by whom.

§ 802. Such assessment must be made each year as soon as the value of the taxable property is substantially known by the Comptroller General, who shall assist the Governor in making the assessment, and immediately send written or printed notices to each Tax Collector, of the Governor's order, and publish also a copy thereof for the space of thirty days, in some public gazette at the seat of Government.

Assessment, when and by whom made.

§ 803. The amount of taxes assessed shall not exceed the actual annual wants of the State Government, exclusive of the commissions of Collectors and Receivers, and any other expense that may be lawfully incurred in assessing and collecting them.

Amount of taxes to be assessed.

§ 804. Taxes must be paid in gold or silver, or in the bills of such banks as pay specie promptly, unless specially excluded by law or otherwise directed by the Governor.

How paid.

§ 805. In netting the digest the default list shall be deducted for the Receivers, and the insolvent list for the Collectors.

Default and insolvent lists.

§ 806. Besides the *ad valorem* tax, the following specific taxes shall be assessed per annum, and estimated in fixing the rate per cent :

Specific taxes.

1. Practitioners of law, physic, and dentistry, five dollars each.
2. Daguerreian, ambrotype, photographic, and similar artists, five dollars.

Article 2.—System of Taxation, and Persons and Property Taxed.

3. Every free white person between the ages of twenty-one and sixty, twenty-five cents.

Auctioneers 4. To carry on the business of an auctioneer, ten dollars.

5. To keep a pool or billiard table for public play, twenty-five dollars.

Bagatelle table. 6. To keep a bagatelle table for public play, ten dollars.

Ten pin alley. 7. To keep a ten pin alley, or alley of like kind for public play, ten dollars.

Any other table with or without a name. 8. To keep any other table, stand, or place, for any other game or play, with or without a name, unless for exercise or amusement only, and not prohibited by law, ten dollars.

9. To keep a public race-track, fifty dollars.

Property specifically taxed not to be returned. § 807. Where persons are taxed specifically for keeping a billiard or pool table, bagatelle table, or ten pin alley, they need not give in the value thereof.

License—when necessary after payment of tax. § 808. No assessment or payment of tax to the State is to exonerate the person from taking out license from the County, or city, or incorporated town, in cases where they are required by law so to do.

Taxes to be first paid, and property always subject. § 809. Taxes shall be paid before any other debt, lien, or claim whatsoever, and the property returned or held at the time of giving in, or after, is always subject.

Conveyances and judgments to avoid payment of taxes, void. § 810. All deeds of gift, mortgages, sales, and assignments of property of any kind, made to avoid paying taxes, or judgments procured to be rendered for the same purpose, are null and void.

Donee, etc., property liable. § 811. The person holding such property, or to whom such conveyance may be made, is liable for such taxes, and the property also, whenever found, no matter in whose possession it may be.

ARTICLE III.

TAXES ON BANKS, RAILROADS, AND OTHER CORPORATIONS.

SECTION.

- 812. Banks, etc.—how taxed.
- 813. Railroads and other corporations.
- 814. Private banks and bankers.
- 815. Special provisions for railroads.
- 816. Foreign banks—agents.

SECTION.

- 817. Foreign insurance companies.
- 818. Express companies.
- 819. Lotteries.
- 820. Illegal sale of lottery tickets.
- 821. How contested by defendant.

Banks—how taxed. § 812. The several banks, or other corporations in this State having banking privileges, shall pay a tax annually of forty cents on every hundred dollars of the highest amount of their capital stock paid in within the limits of their respective charters.

§ 813. The several railroads and other incorporated or unincorporated companies of every kind, except banks which are not

Article 3.—Taxes on Banks, Railroads, and other Corporations.

exempt by their charter or otherwise, or for which there is not a different method of taxation specially prescribed, pay the same rate per cent. upon the whole amount of their capital stock paid in as is levied on other capital, together with the same rate per cent. upon their net annual profits.

§ 814. The provisions of the preceding Sections apply to private bankers, brokers, or exchange merchants.

§ 815. The several railroads, by whose charters a higher tax is forbidden, and such as are now or may hereafter be in operation that do not pay a dividend exceeding six per cent., shall pay only one-half of one per cent. upon the net annual income of each, until they pay a dividend of eight per cent. per annum, in which shall be included the reserved fund, at which time they are to be taxed as other capital.

§ 816. Every agent of any foreign bank or individual not a citizen of this State, doing business herein, with or without an office, or through a citizen of this State or other person, shall pay the same rate of tax as is imposed upon the chartered banks upon one-third of the highest amount of loans or paper discounted, or exchange purchased by him and running to maturity at any one time during twelve months immediately preceding such returns, together with the same rate per cent. upon the net annual profits of the agency.

§ 817. All insurance companies out of this State, doing business herein, shall pay one per cent. upon premiums received.

§ 818. Every express company doing business in this State shall pay a tax of one per cent. upon the gross amount of their profits for each year on business done at offices in this State.

§ 819. Each manager of any lottery, if authorized by the laws of this State, shall pay to the State Treasurer one thousand dollars annually, free of all costs of collection.

§ 820. If any person makes affidavit that any one is selling lottery tickets without the authority of the laws of this State, the Tax Collector of any County shall issue a *fi. fa.* or *ca. sa.*, or both, for the sum of one hundred dollars for each act, sworn to against the offending person as tax executions are issued.

§ 821. The defendant may contest the collection of such process as defendants in ordinary *fi. fas.* may.*

* Laws to levy and collect taxes, being generally for one year only, and being in their nature temporary and changing, are not inserted here. The reader is referred to the Acts of the Legislature on that subject.

Article 4.—Taxes—how Returned and Collected.

ARTICLE IV.

TAXES — HOW RETURNED AND COLLECTED.

SECTION.

- 822. Return of banks, etc.—how made.
- 823. Other returns—to whom made.
- 824. Mines and farms—where taxed.
- 825. Mine or farm on County line.
- 826. Non-residents.
- 827. Lands, etc., of non-residents.
- 828. Returns to Comptroller—how made.
- 829. In what funds taxes payable.
- 830. Returns may be by agent.
- 831. Oath of agent.
- 832. By one of a firm sufficient.
- 833. Who may administer oath.
- 834. Evidence of oath.
- 835. When Receiver must assess.
- 836. Proceedings thereon.
- 837. Who may complain of returns.
- 838. Oath of Assessors.
- 839. Defaulting tax payers.
- 840. Relief against double tax.
- 841. Defaulter's oath.
- 842. Blanks—by whom furnished.
- 843. Lands—how returned.
- 844. How entered in digest.
- 845. Digests—when and where filed.
- 846. Mistakes—how rectified.
- 847. Tax overpaid refunded.
- 848. Before reaching Treasury.
- 849. Doubtful cases.
- 850. Defaulters double taxed.

SECTION.

- 851. Double tax on property.
- 852. Double tax—how avoided.
- 853. Agent of non-resident liable.
- 854. When Collector must pay, etc.
- 855. Insolvent list—how allowed.
- 856. When allowed.
- 857. On what tax allowed.
- 858. Copy of list to be retained.
- 859. List must be recorded.
- 860. Comptroller may wait for list.
- 861. When not allowed.
- 862. New officers excused.
- 863. When their liability attaches.
- 864. Collector's duty as to digests.
- 865. Further time may be allowed.
- 866. Taxes for former years.
- 867. Estates not liable—when.
- 868. Land maps to be made.
- 869. Digests of lands.
- 870. Lands returned by number.
- 871. Improved lands—where returned.
- 872. Wild lands—where returned.
- 873. List of wild lands to be made.
- 874. List to be advertised.
- 875. Wild lands sold—when.
- 876. Owner may redeem.
- 877. Sale shall not affect minors, etc.
- 878. Additional clerk.

Returns and
taxes of
banks, etc.

§ 822. The returns of all banks, railroad, and insurance and express companies, and agents of foreign companies, authorized in this State, shall be made to the Comptroller General by the first day of May in each year, and the taxes thereof shall be paid to the State Treasurer by the first day of October in each year.

Returns—to
whom made.

§ 823. All other companies or persons taxed shall make their returns to the Receiver of the respective Counties where the persons reside or the office of the company is located, except in case of mining companies and of persons who cultivate lands in Counties not their residence.

Returns
of mining
companies
etc.

§ 824. Mining companies must make their returns in the County where the mine is worked, and those who have such plantations must make the returns for them, together with the stock and other property employed thereon, in the Counties where they are respectively situated.

Article 4.—Taxes—how Returned and Collected.

§ 825. If there is a mine or plantation on the line between two Counties, and in two or more Counties, the returns shall be made in the County where the improvements or most of the improvements are.

Mine or
plantation
on County
line.

§ 826. The provisions of the two preceding Sections apply to non-residents who hold such property in this State.

Non-resi-
dents includ-
ed.

§ 827. Lands and other property of non-residents must be returned and paid for in the County where the lands or other property are respectively situated.

Returns of
non-resi-
dents, etc.

§ 828. The returns of all banks, or companies, or persons, required to be made to the Comptroller General, must be in writing and sworn to by the presiding officer or agent of a foreign company to be a just, true, and full return of the capital stock, net annual profits, or other property or effects, for which said bank or company is subject to taxation by the laws of this State.

Returns
made to
Comptroller
General, etc.

§ 829. Such payments must be made in the funds in which taxes may be paid at the State Treasury, free of any expense to the State.

Payment—
how made.

§ 830. Returns of other companies and individuals may be made by themselves or agents to the proper Tax Receiver, by the first day of July in each year, for property held and subject to taxation on the first day of April previously; and payments to the Tax Collector by the first day of October in each year.

Other re-
turns—how
made; tax—
how paid.

§ 831. When any of the oaths of a tax payer are taken by an agent, there shall also, at the proper place, be inserted that he does so as agent for a certain person or persons, or company, naming them.

Oath of
agent.

§ 832. Such oaths taken by any one member of a firm or unincorporated company without a presiding officer, shall be sufficient as to said firm or company property.

Oath of one
partner suf-
ficient.

§ 833. They are taken before the Tax Receiver, who is authorized to administer them; but the oath of non-residents, females, absentees, and sick persons, may be written out in full and taken before any person authorized to administer an oath, and delivered to the Receiver, who shall file such oaths in the office of the Clerk of the Inferior Court.

Oaths—how
taken.

§ 834. The entry in the digests of the tax payers' returns shall be *prima facie* evidence of his having taken such oath, and if false, he is guilty of false swearing and is liable to be indicted and to be punished therefor, as prescribed for other cases of false swearing in the Penal Code.

Digest—
when evi-
dence; pen-
alty for false
oath.

Article 4.—Taxes—how Returned and Collected.

§ 835. Each return shall be scrutinized carefully by the Tax Receiver, and if in his judgment he shall find the property embraced in the return, or any portion of it, returned below its value, he shall assess the value at once or within thirty days thereafter.

In case of
false return
Tax Receiver
to assess
value.

§ 836. If such assessment is not made by the Receiver instanter, he shall give the tax payer notice of his assessment, and in either case it shall be the tax payer's privilege to have it left to three disinterested persons, one of whom he shall select, the other shall be selected by the Receiver, and these two shall select a third if they disagree, a majority of whom shall fix the assessment.

Subsequent
proceedings.

§ 837. It is the privilege of any tax payer of the County where a return is made to complain to the Receiver at any time before his digest is completed that any return is below the true value of the property; in which case he shall notify the person who made the return complained of, if practicable, verbally or by writing, giving him the name of complainant and the ground of complaint, and shall proceed to have a new assessment in the terms of the preceding Section.

Property
returned be-
low its value

§ 838. Whenever such assessors are called in, they shall take an oath before the Receiver to do justice between the parties at variance touching the true assessment of the tax return.

Oath of as-
sessors.

§ 839. When a tax payer has been returned as a defaulter and double taxed, either by the Receiver or Collector, the Justices of the Inferior Court are authorized to relieve the defaulter of the penalty for default at the time said Justices allow the Collector his insolvent lists, provided that said tax payer shows to such Justices, by satisfactory evidence, that either from providential or other good cause he had not an opportunity to make his return to the Receiver of Tax Returns, and at the time of such release promptly pays his proper tax and one dollar to the Collector as his fee, the Collector shall promptly inform the Comptroller General of such release and the amount of taxes paid.

Defaulting
tax payer—
how re-
lieved when
double tax-
ed.

§ 840. All defaulters may at any time and for the same causes, before the digest is made up and ready to be sent to the Comptroller, save the double tax by likewise giving in to the Clerk of the Inferior Court and paying him one dollar, who shall give a copy of such returns instanter to the Receiver, and he shall enter it in the several digests.

Defaulters
—how reliev-
ed from dou-
ble tax.

§ 841. The Clerk, in the cases set forth in Sections 839 and

Article 4.—Taxes—how Returned and Collected.

840, shall require the tax payer to swear to the cause of his delay, and shall state the same in the copies furnished the Comptroller or Receiver. Defaulter's oath.

§ 842. The Comptroller General shall furnish all the Receivers of Tax Returns with a sufficient number of blank forms to conform to the tax laws, by which they shall make out their three digests, and each digest shall be of uniform size, and when returned shall be bound and labeled. Comptroller General to furnish Receivers blank forms. Digests—how made.

§ 843. In making a return of taxable property, the person returning, when making a general return, shall give in each tract or lot of land he may own, specifying its location by number, district, and section, if known, the number of acres, if known, and its aggregate value, in which must be included the value of the buildings, machinery, toll bridges, ferries, or other improvements thereon or appurtenant thereto. Return of land—how made.

§ 844. Such, together with the returns of personal estate and other interests the subject of taxation, must be returned and set down in the digest in separate columns according to the classification furnished the Receivers by the Comptroller General in each year, and their aggregate value carried out, less the exemptions, such being specified. Returns—how entered in digests.

§ 845. The Receiver must make out three of such digests in a fair and legible handwriting, and furnish, by the first day of August in each year, one to the Comptroller General, one to the Clerk of the Inferior Court, and one to the Tax Collector. Number of digests—to whom furnished.

§ 846. If a Receiver makes a mistake in his digest, it is the duty of the Comptroller General, with the sanction of the Governor, to correct such mistake by making the necessary entries in the digest furnished the Comptroller, and must in writing notify the Clerk of the Inferior Court and the Tax Collector of the County from which such digest comes of such mistake and correction. Mistakes in—how corrected.

§ 847. If, by reason of such mistake, or from any other cause, a tax payer's money is in the Treasury for a greater amount than he is liable for, of which such officer is clearly satisfied, he may certify the same to the Governor, who shall, if he approves, draw his warrant on the Treasurer in favor of such tax payer for the proper amount, out of any moneys not otherwise appropriated. Tax overpaid to be refunded when in the Treasury.

§ 848. If such mistake is ascertained before the Tax Collector has paid the amount into the Treasury, the Comptroller General, And before reaching the Treasury.

Article 4.—Taxes—how Returned and Collected.

with the sanction of the Governor, shall authorize such Collector to refund the amount, or if he has not collected it, to order him to desist.

Doubtful cases. § 849. When any similar cases arise which are doubtful in the opinion of the Governor, he shall refer the matter to the General Assembly.

Defaulters to be doubly taxed. § 850. If a person fails to make a return in whole or in part, or fails to affix a value to his property, it is the duty of the Receiver to make the valuation and assess the taxation thereon, and in all other respects to make the return for the defaulting person from the best information he can obtain, and having done so, he shall double the tax in the last column of the digest against such defaulters, after having placed the proper market value or specific return in the proper column; [and for the second year's default the defaulter shall be taxed fourfold, and increasing in the same ratio until a return is made.] (a)

Property not returned to be doubly taxed by Receiver or Collector. § 851. If there is taxable property, real or personal, in a County, except vacant or wild lands, that to the satisfaction of the Receiver, when he comes to conclude his digest, is not returned by any person, and he does not know the owner or possessor, it is his duty to assess and double tax it, describing it particularly; and the same power is conferred to the Tax Collector as to such property, when not assessed or overlooked by the Receiver.

When defaulters not liable for double tax. § 852. If persons who are required to give in land in the Counties where situated fail so to do, they shall be liable only for the real tax assessed by the Receiver, unless they fail to pay the amount by the time required; in which event the Collector shall collect the double tax and issue process therefor.

Agents of non-residents personally liable. § 853. All persons who give in property for persons not resident in the State shall be personally liable for the taxes, as well as the principal and his property.

When Collectors to pay taxes into Treasury and present insolvent list. § 854. The several Collectors must pay into the State Treasury the taxes of their respective Counties by the twentieth day of December of each year, and shall at the same time present their insolvent list, duly certified to have been allowed them by the Grand Jury, or the Justices of the Inferior Court if the Grand Jury has not acted in the premises.

§ 855. [Such insolvent lists shall be presented and allowed as

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follows: The Tax Collectors in every County shall, on oath, be obliged to lay before the Grand Jury or Inferior Court of each County a list of such insolvents as may be in such County, who shall allow or disallow the same.] (a) Insolvent lists—how allowed.

§ 856. [The said Inferior Court or Grand Jury may at any time before the fifteenth day of December in each year, allow said insolvent lists, and such lists can be allowed or disallowed either upon the list of names furnished by the Collector on oath as required in the preceding Section, or on *fi fas* with the proper entries thereon.] (a) Insolvent lists—when allowed.

§ 857. [The Inferior Courts or Grand Juries in making out such lists shall be required to state how much is allowed the Collector on account of the State tax, and how much is allowed on the County tax.] (a) On what tax allowed.

§ 858. [When the Collector shall have his insolvent list credited it shall be the duty of the Inferior Court or Grand Jury to retain a copy of such list and direct the Collector to issue executions for the same, and place them in the hands of some Constable of the County for collection, who shall be entitled to the same fees as he is entitled to for other executions, and two and one-half per centum, and the balance shall be paid by the Constable to the Clerk of the Inferior Court, whose duty it shall be to transmit the same to the Treasury.] (a) Inferior Court to retain a copy of list.

§ 859. When such lists are allowed they must be entered on the minutes of the Court, and the Clerk thereof must furnish the Collector certified copies thereof, stating in the certificate when and by what tribunal allowed. Disposition of insolvent list when allowed.

§ 860. [Whenever the Comptroller General shall be satisfied that a Tax Collector has exercised due diligence in his efforts to have his insolvent list allowed by a Grand Jury or the Inferior Court, within the time prescribed by law, the said Comptroller General shall be authorized, if in his judgment the public interests will not suffer thereby, to wait with the Collectors fifteen and not exceeding thirty days for said insolvent list before issuing *fi. fa.* for the same.] (b) Comptroller General to wait for insolvent lists—how long.

§ 861. They shall not, under any circumstances, be allowed or credited with such lists after executions are issued against them for taxes, until they go to the Comptroller General and settle fairly and fully with him. When not.

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§ 862. The time by which digests shall be completed and the taxes paid does not apply to Receivers and Collectors who have not been in office long enough to make such compliance, but in all such cases such officer must respond to the requirements of the Comptroller General.

When time shall be granted to Receivers and Collectors.

§ 863. Such officers are not liable for the penalties fixed for those regularly elected, until the time allowed by the Comptroller General has expired, unless they have been so long in office as would have been sufficient for the regular officers.

Newly elected Receivers and Collectors to have time.

§ 864. It is the duty of the Collector to examine the digest of the Receiver, and if he knows of any default not entered, to make a schedule of such in the same manner as done by the Receiver, and of any other that he may then or afterwards learn, and of their property, and assess a double tax in the same manner the Receiver is allowed to do, one copy of which shall be furnished to the Comptroller General to add to the digest in his office, and another to the Receiver, who shall likewise correct his digest.

Collector to make a schedule of defaulters and to double tax the same.

§ 865. And in other cases where any unexpected obstacles occur to completing the digest or paying over the taxes within the time prescribed, it is in the discretion of the Comptroller General to allow further and sufficient time.

Comptroller General may allow further time.

§ 866. Receivers and Collectors are required to receive the returns and to collect the taxes thereon for former years, when any person or County are in default, which taxes shall be assessed according to the law in force at the time the default occurred, and shall be so specified in the digest.

Taxes for former years—how returned and collected.

§ 867. The estate of any person shall not be liable for default when said person may have died before the time expired for giving in taxes for the year, and the representatives or any heir may give in the same, and in any event, for that year, such estate shall not be liable to double tax.

Estate not liable for default—when; and in no event to be doubly taxed the first year.

§ 868. [The Surveyor General is authorized and required to have published a sufficient number of maps of those lands which have been surveyed as will enable him to furnish each Receiver with two, embracing all the lands in his County, and one to file in the Clerk's office of the Superior Court.] (a)

Secretary of State to furnish maps

§ 869. [Each Receiver shall make a separate digest of all the lots or parts of lots in his County which have not been returned (except the same be in a town or city), and shall designate by ap-

Digest of lands.

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propriate letters, whether they be improved or unimproved lands. He shall forward a copy of said digest to the Comptroller General's office. The improved lands not returned shall be assessed and the tax collected as is now required by law.] (a)

§ 870. [It shall be the duty of the Receiver to require all persons making returns of land in his County to return the same by district, number, and section, if the lands have such designation; and where lands have no such designation, then by such description as will enable the Receiver to identify them. Receivers are prohibited from receiving any return of lands which does not so designate them, and the Comptroller General is prohibited from allowing any Receiver compensation or per centage for his services who receives returns in any other manner.] (a)

Lands to be returned by number, etc.

§ 871. [All persons owning improved lands which have a tenant or tenants thereon, shall return the same in the County where the land lies.] (a)

Improved lands, where returned.

§ 872. [All persons owning unimproved or wild lands, in Counties without the County of their residence, shall be required to make returns of the same to the Comptroller General, or to the Receiver of the County, where the land lies. Said returns may be made by forwarding by mail or other safe conveyance to either of said officers a statement, under oath, of the lands owned and the value thereof; and when the rate of the *ad valorem* tax has been fixed, and the collection of taxes ordered, the taxes due upon said wild lands shall be paid to that officer to whom the return was made.] (a)

Wild lands—where returned.

§ 873. [When the several digests of the Receiver of Tax Returns of the several Counties of the State have been received, it shall be the duty of the Comptroller General to compare said returns with each other, and to make out a complete list of all the unimproved or wild lands not given in.] (a)

Comptroller to make list of unreturned wild lands.

§ 874. [When such list is completed, the Comptroller General shall, for sixty days, make advertisement of the same in one newspaper in each Congressional District, and require, in said publication, the owner of said lands to come forward and give in and pay taxes upon said lands, and in default thereof that said lands will be sold. A copy of said list shall be furnished the Clerk of the Superior Court of each County in the State, who shall post the same in his office.] (a)

List to be advertised.

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§ 875. [On the expiration of the time of advertisement, the Unreturned wild lands to be sold. Comptroller General shall issue execution against all unimproved lands not returned, assessing the value at the average value of such land in the County where it lies, which execution shall be directed to the Sheriff of the County where the land lies, and the Sheriff shall forthwith proceed to advertise and sell the same under the same rules and regulations as govern other Sheriff sales, and make his returns to the Comptroller General.] (a)

§ 876. [The owners of any lands thus sold for taxes shall have Owner may redeem. the privilege of redeeming the same at any time within two years, by paying to the purchaser the amount of his purchase money and costs, together with interest at the rate of ten per cent. per annum thereon; or on making satisfactory evidence of his title to the Comptroller General, he may receive the purchase money, less the amount of taxes due thereon and the cost expended in collecting said tax.] (a)

§ 877. [No sale made under the 875th Section of this Code Sale shall not affect minors, etc. shall, in any way, operate to affect or defeat the title of any minor, idiot, or lunatic of this State to the land.] (a)

§ 878. If the duties which this act imposes upon the Comptroller Additional clerk for Comptroller. General, in the opinion of the Governor, requires additional assistance, the Governor, is authorized to employ an additional clerk in the Comptroller's office for that purpose.] (a)

ARTICLE V.

DELINQUENT TAX PAYERS, AND PROCEEDINGS AGAINST THEM.

SECTION.

- 879. Defaulting corporations.
- 880. Forfeiture of charter, etc.
- 881. Penalty where none is fixed.
- 882. Default tax on foreign corporations.
- 883. Penalty on lottery dealers.
- 884. Assessments in absence of returns.
- 885. *Fi. fa. vs.* corporation.
- 886. *Fi. fa. vs.* agent—how executed.
- 887. Duty of collecting officer.
- 888. Relief of one unjustly put in default.
- 889. Collector's *fi. fa.*—how issued, etc.
- 890. Fees of officers.
- 891. By whom and how executed.

SECTION.

- 892. Authority of Constable.
- 893. Sales under tax *fi. fas.*
- 894. Excess—how disposed of.
- 895. Conveyance to purchaser.
- 896. Purchaser to have possession.
- 897. Property exempt from sale.
- 898. Claims—condition of claim bond.
- 899. Unreturned property—proceeding.
- 900. Owner may redeem land sold.
- 901. Tax *fi. fa.* runs to any County.
- 902. Penalty against defaulting brokers.
- 903. Defaulting corporations, etc.

§ 879. If any corporation, company, person, agency, or insti-

(a) Acts of 1866, pp. 166-7-8.

Article 5.—Delinquent Tax Payers, and Proceedings against them.

tution, who are required to make their returns to the Comptroller General, shall fail to return the taxable property or specifics, or pay annually the taxes for which they are liable to the State Treasurer, the Comptroller General shall issue against them an execution for the amount of taxes due, according to law, together with the costs and penalties.

Comptrol-
ler General
to issue *fi.*
fa. against
certain delin-
quents.

§ 880. The penalty against all such corporations shall be the forfeiture of their charters, and if not chartered by this State, then the immediate suspension of their business therein.

Penalty
against de-
linquent in-
corporations

§ 881. The penalty or default tax on banks, railroads, and other corporations, where there is no special provision, shall be three times the amount of their lawful tax.

Penalty
against cor-
porations
etc.

§ 882. The penalty or default tax on foreign insurance companies shall be five hundred dollars; on foreign bank agencies, two thousand dollars; on express companies, ten thousand dollars.

Penalty
against fore-
ign insur-
ance compa-
nies, etc.

§ 883. The penalty on lottery dealers, if there should be any authorized by the laws of this State, shall be three times the amount of the taxes assessed.

Penalty
against lot-
tery dealers.

§ 884. When there is no return by which to assess the tax, the Comptroller General shall, from the best information he can procure, assess in his discretion.

Where
no return,
Comptroller
General to
assess tax.

§ 885. The executions issued by the Comptroller General against any bank or other company shall be directed to all and singular the Sheriffs and other lawful officers of this State, with directions to levy the same on the property of the corporation or company, with power to issue and serve garnishments upon the debtors of the corporation.

Fi. fas.
issued by
Comptroller
General
against a
Company—
how direct-
ed, etc.

§ 886. The executions against agents of foreign institutions as aforesaid shall be against the principal agent or his successor, and shall authorize the officer to levy on all the property of the agency, to seize its money, notes, or other effects.

Fi. fas. vs.
agents of for-
eign compa-
nies.

§ 887. When an officer collects money on such process, or on any other issued by the Comptroller General, he shall, without delay, remit the same to him by some safe and speedy method, and on failure to do so, is liable as he would be to other plaintiffs.

Money
raised on
above *fi. fas.*
to be imme-
diately sent
to Comptrol-
ler General.

§ 888. When a person shall have lawfully returned and paid his taxes in one County, and is treated as a defaulter in another for the same tax, or any portion thereof, the Grand Jury or the Justices of the Inferior Court of the County claiming the tax may discharge said defaulter, which will exempt him from liability

One wrong
ly judged a
defaulter—
how reliev-
ed.

Article 5.—Delinquent Tax Payers, and Proceedings against them.

for it, and shall authorize the Comptroller to credit the Collector for the same, and the Governor to draw his warrant therefor.

Tax Collector's *fi. fas.* — when and how issued. § 889. Executions for non-payment of taxes against persons who are not required to pay to the Treasurer are issued by the Tax Collectors of their respective Counties as soon as the last day for payment has arrived, and must be directed to all and singular the Sheriffs and Constables of this State.

Fee for issuing Tax *fi. fas.* § 890. [Tax Collectors shall be allowed a fee of fifty cents for issuing tax *fi. fas.*; but no Tax Collector, Sheriff, or Constable, shall receive costs on said *fi. fas.* unless the same be collected from the defendant.] (a)

By whom levied and sales under. § 891. Executions may be levied by either of the officers to whom directed, or other officer who by law may be authorized in their place: when the principal amount does not exceed fifty dollars, the levy and sale must be made by a Constable, and not otherwise. If the Constable levies on land, it must be returned to and sold by the Sheriff of the County.

Constable may levy in any part of the County. § 892. The Tax Collector may place his *fi. fas.* in the hands of any one Constable of the County, who shall be authorized to collect or levy the same in any part of the County.

Sales under tax *fi. fas.* § 893. Sales under tax *fi. fas.* shall be made under the same rules governing other judicial sales.

Excess—how paid. § 894. If there is any excess after paying taxes and all expenses, it shall be immediately paid to the person authorized to receive it.

Deed made at sale under tax *fi. fa.* valid. § 895. The deed or bill of sale made by such officer shall be just as valid to the purchaser as if made under the ordinary process of law issuing from the Superior Court.

Officer to put purchaser in possession of land. § 896. The officer selling has the authority to put purchasers in possession of land sold, as in other cases.

Property exempt from sale. § 897. Property exempted from levy and sale ordinarily, is exempted from levy and sale for taxes.

Claim may be interposed when tax *fi. fa.* is levied; claimant to give bond, and to be liable as on appeal bond. § 898. When property is levied on under a tax *fi. fa.* issued either by the Comptroller General or Tax Collector, it may be claimed by a third person and tried in the same manner as other claims are, except that the claimant shall give a bond and security for the eventual condemnation money, and if found subject, such claimant and his sureties shall be in all respects liable as on appeal bond.

Article 5.—Delinquent Tax Payers, and Proceedings against them.

§ 899. When property is assessed for taxes which has not been returned by any one, as soon as assessed the Tax Collector shall at once issue an execution against it for the amount due and costs, and the Sheriff shall advertise it for sale in some public gazette ninety days before the day of sale, and if by said day the taxes are not paid, it shall be sold, provided renting or hiring will not bring the requisite amount. Whatever overplus there may be shall be paid over to the Ordinary as a part of the Educational Fund, with a statement of the property and account of sales, subject to the claim of the true owner within four years.

Property not returned but assessed to be sold or hired, overplus paid to Ordinary, and may be claimed by true owner.

§ 900. Whenever any land is sold by virtue of a tax execution issued under this Code, the owner thereof shall have the privilege of redeeming said land thus sold within one year by paying the purchaser the amount paid by said purchaser for said land, with ten per cent. premium thereon, from the date of the purchase to the time of payment.

Land sold under tax *fi. fa.* may be redeemed by owner.

§ 901. If there is not sufficient property in the County where the tax payer resides to satisfy the taxes, property situated in any other County is the subject of levy and sale.

Tax *fi. fa.* runs in any County.

§ 902. If any broker, private banker, or exchange merchant, or their agents, in this State, fail to return the amount of capital they intend to employ during the year, they shall pay a tax of five hundred dollars, to be levied and collected as other taxes.

Brokers, etc., failing to return amount of capital taxed \$500.

§ 903. Any incorporated or other company making default, shall be taxed by the Collector as such defaulters are by the Comptroller General.

Defaulting companies.

ARTICLE VI.

DELINQUENT TAX RECEIVERS AND COLLECTORS, AND PROCEEDINGS AGAINST THEM.

SECTION.

- 904. Penalty for not completing digest.
- 905. Penalty for improper digest.
- 906. Penalty for useless digest.
- 907. Receivers' liability—how enforced.
- 908. Penalty for false digest.
- 909. Penalty for deceiving tax payer.
- 910. Altering digest by Collector.
- 911. *Fi. fa. vs.* Collector and sureties.

SECTION.

- 912. Amount of penalty.
- 913. *Fi. fas. vs.* Tax Officers.
- 914. How *fi. fa.* may be suspended.
- 915. Property bound from date of bond.
- 916. Sales under *fi. fas. vs.* Tax Officers.
- 917. Collector must await digest.
- 918. Must give bond, etc., before he collect

§ 904. If a Tax Receiver fails to have his digest completed and deposited by the first day of August in each year, unless excused

Article 6.—Delinquent Tax Receivers and Collectors, and Proceedings against them.

Receiver by the terms of the law or by the Comptroller General, he forfeits, failing to complete digest to forfeit commissions, for every week's delay, one-tenth of his commissions; and if the delay extends beyond thirty days he forfeits one-half his commissions; and if beyond the time when the Governor and Comptroller fix the rate per cent., he forfeits all his commissions.

§ 905. If he fails to make out his digest in the manner prescribed by law, or to comply with the directions given him by the Comptroller General, in so doing he forfeits one-half his commissions.

§ 906. If such digest is made out so badly as not to answer the purpose of the tax laws, he forfeits all his commissions, and must be removed from office by the Justices of the Inferior Court, on the request of the Comptroller General.

§ 907. If he receives commissions, which he is not entitled to receive or retain, or in any other manner becomes possessed of any money belonging to the State, or incurs any liability thereto, the Comptroller General is authorized to issue execution or other legal process against him.

§ 908. If a Receiver makes a false return in either of his digests, expressive of more than is returned, he shall forfeit to the party aggrieved, in all cases, one hundred dollars, and if the amount out of which such party is defrauded by such return is more than one hundred dollars, then ten dollars for every one dollar over that amount, to be recovered by a *qui-tam* action.

§ 909. If, by any device, intentionally, he causes the tax payer to pay more than his lawful tax, the provisions of the preceding Section apply.

§ 910. If any Collector, with fraudulent intent, alters the digest rendered to him, or any other of the digests of his County, he is guilty of forgery, and, on conviction, shall be punished by imprisonment in the penitentiary for not less than two nor longer than ten years.

§ 911. If any Collector shall fail to settle his accounts with the Comptroller General in the terms of the law, he shall issue execution against him and his sureties for the principal amount, with the penalty and costs.

§ 912. The penalty is twenty per cent. per annum, upon the amount retained, from the time of default until paid, which includes interest.

§ 913. All executions and other process against Collectors and

Article 6.—Delinquent Tax Receivers and Collectors, and Proceedings against them.

Receivers must be directed to all and singular the Sheriffs of this State, and must be executed by them, their lawful deputy, or other officer lawfully in their stead. *Fi. fas.* against Collectors—how directed and executed.

§ 914. Executions so issued shall not be suspended or delayed by any judicial interference with them, but the Governor may suspend the collection not longer than the next meeting of the General Assembly. Not to be suspended, etc.

§ 915. The property of Collectors, Receivers, and of their sureties, is bound, from the execution of their bonds, for the payment of taxes collected and the discharge of their duties. Property of Collectors, Receivers, etc.

§ 916. The proceedings in selling property under such executions must be the same as under *fi. fas.* issued from the Superior Court. Levy and sale under *fi. fas.*, etc.

§ 917. If any Collector shall collect, or attempt to collect, any taxes before the Receiver has completed and transmitted his digest to the Comptroller General, unless specially so ordered by such officer, or allowed by special enactment, he forfeits to the State double the amount so collected, or attempted to be collected, to be recovered by execution issued by the Comptroller General. Collector not to collect taxes, etc.

§ 918. If any Collector collects, or attempts to collect, any tax before he has given and had approved the necessary bonds and security, and taken the oaths of office, he is guilty of a misdemeanor, and, upon indictment and conviction, shall be fined not less than one hundred dollars, and, in addition, double the amount so collected, and in default of payment three months' imprisonment in the common jail. The Governor may vacate the commissions of defaulting Tax Collectors, or of Tax Receivers failing or refusing to do their duty, and in such event the vacancy shall be filled in the manner prescribed for other vacancies. Collector not to collect tax before giving bond, etc. Governor may vacate commission.

ARTICLE VII.

TAX RECEIVERS.

SECTION.

- 919. How Receivers are elected, etc.
- 920. Vacancies—how filled.
- 921. Receiver's oath.
- 922. Liability on bond.
- 923. Receiver's duties specified.
- 924. His failure to advertise no excuse.

SECTION.

- 925. Penalty for refusing return.
- 926. Party refused, etc.
- 927. Clerk must forward returns.
- 928. Claim of right to assess—no refusal.
- 929. Receiver's pay from County.

§ 919. Tax Receivers shall be elected on the first Wednesday in

Article 7.—Tax Receivers.

Tax Re-
ceivers--how
elected, etc. January of each year, for the term of one year, and are commis-
sioned and qualified as Clerks of the Superior Court are.

Vacancies
—how filled. § 920. Vacancies are filled as vacancies for such Clerks, but if
there is not time to fill the same by the first day of May in each
year by election, the Justices of the Inferior Court shall appoint
one, who shall discharge the duties of the office for the balance of
the year.

Receiver's
oath. § 921. Such Receiver, whether elected or appointed, before
entering on the duties of his office, besides the oath required of
all civil officers, must take and subscribe the following oath:

“I swear that I will truly and faithfully perform the duties of
Receiver of returns of taxable property, or of persons or things
specially taxed in the County to which I am appointed, as required
of me by the laws, and will not receive any return but on oath or
affirmation, and will, before receiving returns, carefully examine
each, and will, to the best of my ability, carry out all the
requirements made upon me by the tax law. So help me God.”

Shall give
bond and se-
curity. [He shall also at the same time give bond and security in a
sum equal to one-half of the amount of the State tax, supposed
to be due from the County, for the year in which he shall give
bond; the amount of said bond to be filled up by the Comptroller
General before being sent out to the several Counties from the
Executive Office.] (a)

Liability
of Receivers,
etc. § 922. Receivers and their sureties are liable on their bonds for
all penalties or forfeitures they may incur under the law, and for
all losses, or damage, or expense the State may sustain by reason
of their conduct.

§ 923. It is his duty—

Duties of
Receiver en-
umerated. 1. To receive all returns of taxes within the time and in the
manner prescribed by law.

2. To make out and perfect the three digests in writing and
figures plainly, legibly, and neatly, and to properly deposit them.

3. To give ten days' notice in writing of the several times
and places at which he will attend in the several Militia Districts
of the County, for the purpose of receiving tax returns.

4. To attend at such place at least three times during the time
allowed in which to make returns.

5. To keep a standing advertisement as to the day or days
when he will be at the County site for such purpose.

Article 7.—Tax Receivers.

6. To receive tax returns at any time when a tax payer applies to give in.

7. To embrace in his digest to the Comptroller General, the Clerk of the Inferior Court and the Tax Collector, respectively, a list of all defaulters, and the amount of their true and double tax, and of all property assessed by them and returned by no one, or other special action had in conformity to the laws.

8. To publish at the door of the Court House for thirty days lists of all the defaulters and the amount of their double taxes.

9. To take from each tax payer resident of the County at the time of receiving his tax returns the number of his own children between the ages of six and eighteen years, and those for whom he is guardian, and enter the same in the proper place and column in the digests.

10. To assess upon the digests deposited with the Clerk of the Inferior Court the County taxes according to law, and the rate per cent. levied by the Justices of the Inferior Court.

11. To conform to such rules as he may be furnished with, and to obey such orders as may be given by the Comptroller General.

12. To perform all other duties that the law requires, and which necessarily under the law appertain to his office.

§ 924. It shall not be an excuse to any person for not making a return of his taxes as the law requires, that the Receiver should fail to advertise or fill his appointments. Negligence of Receiver, etc.

§ 925. If any Receiver refuses to receive any return of taxes when properly tendered, and in presence of a witness, and in the time the law requires, he is guilty of a misdemeanor, and on indictment and conviction, shall be fined not less than fifty dollars. Refusal of Receiver to receive returns, etc.

§ 926. The person whose return is thus refused may save a double tax by making his return to the Clerk of the Inferior Court, together with an affidavit in writing that he tendered said return to the Receiver, stating the time when, place where, and persons present, and that it was refused. One whose return has not been received, etc.

§ 927. Such Clerk shall forward a copy of said return and affidavit to the Comptroller General instantler, and retain the originals, for which he shall be entitled to one dollar from the tax payer. Where return is made to Clerk of Inferior Court.

§ 928. The claim of the Receiver to assess a tax payer's property is not a refusal to receive a return. No refusal of a return, etc.

§ 929. The County shall pay the Receiver one-half of what the Collector gets for collecting the County tax. Receiver's pay, etc.

Article 8.—Tax Collectors.

ARTICLE VIII.

TAX COLLECTORS.

SECTION.

930. Election and qualification.
 931. Vacancies—how filled.
 932. Collector's oath.
 933. Collector's bond.
 934. Bond for County tax—how approved.

SECTION.

935. Must give bond before he collects.
 936. County Collector appointed—when.
 937. Collector's duties specified.
 938. His failures no excuse for others.

Election,
commission
of Tax Col-
lectors, etc.

§ 930. Tax Collectors are elected at the same time, in the same manner, for the same term of office, and are commissioned and qualified as Tax Receivers.

Vacancies
—how filled.

§ 931. Vacancies are filled as they are in the office of Receiver, and Section No. 920, respecting Receivers, applies to Collectors, except so much thereof as fixes the first day of May, and in lieu thereof for Collectors the first day of August shall be the time.

Collector's
oath.

§ 932. Before entering on the duties of his office, besides the oath required of all civil officers, he shall take and subscribe the following oath:

“I, ———, Tax Collector of the County of ———, do swear that I will faithfully discharge the duties required of me by law as Tax Collector, and that I will search out and make a true return of all defaulters, polls, professions, and all taxable property not found on the Tax Receiver's digest, or not returned to the Clerk of the Superior Court by the fifteenth of August, and that I will pay over all taxes collected by me as required by law. So help me God.”

Amount of
bonds and
their condi-
tions.

§ 933. [He shall also give bond and security for thirty-three and one-third *per cent.* more than the State tax supposed to be due from the County for the year for which said officer is required to give bond, the amount of the bond to be filled up by the Comptroller General before being sent out to the County from the Executive Office,] (a) and shall give another bond with sufficient security, payable to the Justices of the Inferior Court, conditioned for the faithful performance of his duties as Collector of the County tax, in a sum to be fixed by such Justices.

Approved
by Inferior
Court.

§ 934. Such bond for County taxes when given must be approved by three Justices of the Inferior Court, filed in the office of their Clerk, recorded in the book with other official bonds, and in all respects is an official bond.

Article 8.—Tax Collectors.

§ 935. Tax Collectors shall not collect any portion of the County tax until such bond is given, and if they fail to give such a bond, or one satisfactory to such Justices, they may appoint some competent person to collect the County tax. Bond to be given, etc.

§ 936. When such an appointment is made, the person appointed shall give such a bond as is required of a Tax Collector, and he shall take an oath faithfully to collect and pay over the County tax, and in all respects shall have the same privileges, discharge the same duties and incur the same penalties as the Tax Collector would in collecting the County tax. Duty of person so appointed.

§ 937. It is the duty of the Tax Collector—

1. To diligently collect and promptly pay over in the funds allowed by law the State and County taxes to the Comptroller General and the County Treasurer respectively. Collector's duties enumerated.

2. To search out and ascertain as far as possible all polls and professions, and all taxable property not returned to the Receiver or not found in his digests.

3. To enter all of such defaults in a book kept for that purpose, to assess and collect thereon a double tax and pay the same over to the Comptroller General and County Treasurer respectively, after deducting [single] (a) commissions, and to deposit said book with the Comptroller General, and a copy with the Clerk of the Inferior Court, before the day of final settlement.

4. To have his insolvent lists allowed in the manner required by law before final settlement with the Comptroller General.

5. To issue executions against all defaulters and insolvents, and place them with the proper officer for collection.

6. To give notice of the time and places of his attending to collect the taxes, and of the days he will be at the Court House, and there to attend during the time for collection as required of the Receiver.

7. To publish at the door of the Court House, for thirty days, his insolvent lists, including the taxes of each person thereon. To furnish to election managers of the County lists of all persons who have not paid their taxes.

8. To pay the Receiver his commissions, upon the production of the Comptroller General's receipt for his digest, with a specification therein of the amount of commissions to which he is enti-

Article 9.—Compensation of Collectors and Receivers.

tled, and not otherwise ; and to produce said Receiver’s receipts, with his receipts thereon, to the Comptroller General, before he shall be allowed credits for such commissions.

9. To conform to such rules as may be furnished, and to obey such orders as may be given by the Comptroller General.

10. To perform all other duties that the law requires, and which necessarily, under the law, appertain to his office.

Collector’s
negligence
no excuse
to default-
ing tax
payer.

§ 938. It is no excuse to any person for not paying his taxes as the law requires, that the Collector should fail to advertise or fill his appointments.

ARTICLE IX.

COMPENSATION OF COLLECTORS AND RECEIVERS.

SECTION 939. Pay of Receivers and Collectors.

Commis-
sions of Re-
ceiver and
Collector.

§ 939. The following rates of commissions shall be allowed in the net amount of each digest to each Receiver and Collector of the State taxes, [*provided*, that no Receiver of Tax Returns or Tax Collector shall receive more than fifteen hundred dollars commissions on the general State Tax] (a)—to wit :

On all digests over \$20,000.....	3 per cent.
“ “ “ 10,000 and under \$20,000.....	4 “
“ “ “ 6,000 “ “ 10,000.....	5 “
“ “ “ 4,000 “ “ 6,000.....	6 “
“ “ “ 3,000 “ “ 4,000.....	7 “
“ “ “ 2,000 “ “ 3,000.....	8 “
“ “ “ 1,000 “ “ 2,000.....	9 “
“ “ under 1,000.....	10 “

ARTICLE X.

MISCELLANEOUS PROVISIONS.

SECTION.	SECTION.
940. Comptroller may make rules.	942. Rules to be published.
941. Rules to be furnished tax officers.	943. Bonds of tax officers sued on.

Comptrol-
ler General
to make
rules for Col-

§ 940. The Comptroller General has authority to make all need-ful rules and regulations for the government of Tax Collectors and Receivers, and any other rules that may be necessary to in-

(a) Acts of 1863-4, p. 16.

Article 10.—Miscellaneous Provisions.

sure the prompt and faithful execution of the tax laws, if not in violation of or inconsistent therewith. lectors and Receivers.

§ 941. These rules, when made, shall be entered in a book in his office, kept for that purpose, and be binding on all successors until amended or repealed, copies of which shall be printed and furnished to Receivers and Collectors at the time of sending them the forms required. Enter the same in a book and furnish them to Receivers and Collectors.

§ 942. They shall also be printed during the month of March every year in a public gazette published at the seat of Government, if in the discretion of the Comptroller he shall deem it beneficial. And may publish them in a newspaper.

§ 943. Nothing shall be so construed as to make the Collector's and Receiver's bonds not subject to be sued according to due process of law, but which is not to be done unless some emergency should make it necessary. Bonds of Collectors and Receivers subject to be sued on

CHAPTER II.

REVENUE FROM OTHER SOURCES.

SECTION.

944. Sources of revenue, etc.

945. What moneys go into Treasury.

SECTION.

946. What fees go into Treasury.

§ 944. The sources from which the State does or may derive revenue, other than by taxation, are as follows: Revenue of the State from sources other than taxation enumerated.

1. The net earnings of the Western and Atlantic Railroad.
2. Dividends on the bank stock owned by the State.
3. Dividends or interests on the stock owned in the Main Trunk Railroad.
4. Sale of State bonds at a premium.
5. The use by individuals of any other property of the State.
6. Receipts for military or other claims against the United States.
7. Receipts from assets of the Central Bank and other old claims.

8. Receipts on claims from Tax Collectors or other officers for previous years, which were in litigation or regarded as insolvent.

9. Dues for the sale of reverted or other land to which the State may have the title.

Chapter 2.—Revenue from Other Sources.

10. Fees which the Secretaries of the Governor, the Secretary of State, the Treasurer, the Comptroller General, and Librarian, may receive for official duties.

Miscellaneous revenue to be paid into the Treasury.

§ 945. All the receipts from the resources mentioned in the preceding Section, all fees not specially awarded to any particular officer, all fines and forfeitures not otherwise disposed of, all moneys collected from any source or on any account, to which the State is entitled, not otherwise directed, must be paid into the State Treasury.

Fees to be paid to Treasurer; those of Governor's Secretary.

§ 946. The fees which officers are allowed to charge, and which, when collected, must be paid to the Treasurer, are as follows:

1. Those by the Secretaries of the Governor:

A grant for 100 acres or under.....	\$1 00
A grant for over 100 acres or under 300 acres.....	2 00
A grant for over 300 acres or under 500 acres.....	3 00
A grant for over 500 acres or under 1000 acres.....	4 00
A grant for 1000 acres and over, one per cent. per acre for every additional acre.	
Affixing the Great Seal of the State, by order of the Governor, to any thing of a private nature.....	2 00
For every examination of records per request.....	50
Administering oath of office to a salaried officer and giving certificate thereof.....	1 00
Entering a testimonial.....	50
Attaching the Seal of the Executive Department.....	1 00
Certified copy of any record not more than 300 words.....	1 00
If more than 300 words, per 100 words.....	10

Secretary of State.

2. Those by the Secretary of State:

For a grant of land and affixing the Seal thereto, the same as is allowed the Secretaries of the Governor, according to the number of acres.	
For registering each grant.....	50
For registering bond or other similar writing.....	1 00
For a testimonial without the Great Seal.....	1 00
For a testimonial with the Great Seal.....	2 00
Affixing the Great Seal to any other paper.....	1 00
For a certified copy of a grant to land.....	1 00
For a certified copy of any other paper not of more words.....	1 00
For more words, per hundred.....	10
For every search per request.....	25

Treasurer.

3. Those by the Treasurer:

For every extract or copy from any book, minutes, or file of office, not more than 300 words.....	1 00
For every additional 100 words.....	10
For every search by request.....	25

Chapter 2.—Revenue from Other Sources.

4. Those by the Comptroller General :

Comptroller
General.

Every extract or copy from any book, minutes, or file of office, not more than 300 words.....	1 00
For every additional 100 words.....	10
For every search by request.....	25

5. Those by the Secretary of State as Surveyor General :

Surveyor
General.

For examining a plat.....	50
For recording a plat.....	1 25
For recording a plat of a town, township, or village.....	10 00
Transmitting a <i>caveat</i> to Governor and attending thereon.....	1 00
Certified copy of any original record not more than 300 words....	1 00
For every additional 100 words.....	10
Certified copy of an original warrant.....	50
Issuing a certificate of a record.....	50
For every search per request.....	25

6. Those by the Librarian :

Librarian.

Certifying to the existence or contents of any manuscript, map, or other document intrusted to his keeping.....	1 00
Furnishing copies of his catalogue of books.....	50

TITLE VIII.

THE PUBLIC DEBT.

CHAPTER I.

THE PUBLIC DEBT.

SECTION.

- 947. State bonds—how authenticated.
- 948. Amount of bonds—time of payment.
- 949. Coupons—how signed and paid.
- 950. Bond must accompany coupon, etc.
- 951. State bonds—where payable.
- 952. Bonds may be exchanged—when.
- 953. Bonds taken up not to be re-issued.
- 954. New bonds may issue for lost ones.
- 955. On what showing new bonds issue.

SECTION.

- 956. State must be indemnified.
- 957. Stolen bonds—how renewed.
- 958. Bonds, etc., paid off—how kept.
- 959. Payment of bonds provided for.
- 960. Surplus set apart.
- 961. Overplus paid to bonds not due.
- 962. Bonds paid before due to be reported.
- 963. Provisions for education, etc.

§ 947. All bonds or certificates of the State for the State debt must be authenticated by the signature of the Governor, the Secretary of State, and stamped with one side of the seal of the State—to wit, that side which has on it the motto, “Wisdom, Justice, and Moderation.”

State bonds
and certi-
ficates—how
authenticat-
ed.

Chapter 1.—The Public Debt.

Amounts of, and how payable. § 948. They shall be, unless otherwise specially ordered by the General Assembly, in sums of five hundred and one thousand dollars each, payable in twenty years after their date, bearing interest at six per cent. per annum, which interest is payable semi-annually by coupons thereto annexed.

Coupons—how signed and paid. § 949. They may, before or after issued, be presented to the State Treasurer, who shall sign, in his official capacity, all the coupons thereto attached, which then may be paid at maturity by the Treasurer without the presentation of the bond, or further warrant or authority.

When unsigned not to be paid, unless accompanied by the bond. § 950. If coupons are not thus signed, they shall not be paid, unless accompanied by the bond to which they belong, and before payment shall be by the Treasurer detached.

When public debt to be paid. § 951. The principal and interest shall be made payable at such place in this State or other of the United States as the Governor may in his discretion direct, and he may direct the principal payable at one place and the interest at another.

Bonds payable out of the State, held by citizens, may be exchanged. § 952. Where citizens of this State become possessed of State bonds payable out of this State, the Governor may give in exchange for them bonds payable herein, provided there is no loss to the State by the exchange, and the expense thereof, if any, is borne by the holders of the bonds.

Such original bonds not to be re-issued. § 953. When such exchange occurs, the original bonds so taken up shall not be re-issued on any account whatever, unless specially provided for by the General Assembly.

Lost bonds or coupons. § 954. When any bond or coupons shall be lost, mutilated, or destroyed, the Governor may issue to the holder a new bond, with proper coupons attached.

New bonds, how obtained. § 955. When mutilated, the mutilated bonds must be surrendered; when lost or destroyed, the holder must make affidavit of such fact, that they were his, in his own or some other right, at the time of the loss or destruction; if lost, that he has made diligent search without avail, and despairs of ever finding them.

Bond and surety to be given. § 956. Having made such affidavit, he shall then, before receiving the new bond, give bond and surety to the Governor in a sum double the amount of the principal thereof and the unpaid interest thereon, conditioned to save the State harmless on account of issuing such new bond.

§ 957. [The Governor is authorized to issue a new bond or bonds in lieu of a bond or bonds of the State which may have been

Chapter 1.—The Public Debt.

stolen, upon the holders making affidavit as provided for in Section 955, *provided* said holders may have given or shall give twelve months' notice of the loss or theft of said bonds, fully describing the same, at the Treasury of the State, at least twelve months prior to the time when said new bonds may be or shall be issued; *provided* that no new bond shall be issued for or in lieu of any lost or stolen bond until the owner of such bond shall first give to the State a bond with security, to be approved by the Governor for the time being, fully indemnifying the State against the payment of the bond so lost or stolen.] (a)

New bonds
in lieu of
those stolen.

§ 958. When bonds or coupons are paid, they must be stamped as paid, and preserved in the Treasurer's office with the same care as the funds of the State.

Disposition
of bonds
and coupons
when paid.

§ 959. An amount of money stands annually appropriated sufficient to pay the principal and interest of any bonded debt of the State becoming due during the year.

Appropriation
annually
for bonded
debt.

§ 960. Any surplus in the Treasury after allowing for all the annual charges against it, including such claims, is likewise appropriated to the same object.

Surplus
in Treasury
appropriated
to bonded
debt.

§ 961. Whatever amount may remain from the appropriations contained in the two preceding Sections more than enough to pay such debts may be applied, by the order of the Governor, to redeeming any particular class of bonds not due as he may order, and which, in his judgment, it is to the interest of the State to prefer and anticipate.

Surplus ap-
propriation
may be ap-
plied by the
Governor.

§ 962. All bonds redeemed before maturity must be by the Governor annually reported to the General Assembly, particularly described, and the terms upon which they were so redeemed.

Bonds re-
deemed be-
fore due.

§ 963. For the purpose of carrying into effect the changing of the public debt paid with the net earnings of the Western and Atlantic Railroad into a permanent Educational Fund, the Governor is authorized to substitute other State bonds bearing the same rate of interest for those in the hands of holders, and to issue new bonds and arrange them upon such schedule and payable at such periods as that by providing annually a sinking fund, the whole principal of the public debt shall be extinguished by the time the last bonds shall become due. This sinking fund,

Provision
for applying
proceeds of
W. and A. R.
R. to Educa-
tional Fund.

Chapter 1.—Public Buildings.

Annual sinking fund—how paid; public debt—when paid. when ascertained, shall be paid out of the net earnings of the Western and Atlantic Railroad, and until ascertained the Governor shall use so much of the earnings of said road as shall be necessary to meet said bonds annually falling due.

TITLE IX.

PUBLIC PROPERTY.

CHAPTER I.

PUBLIC BUILDINGS.

SECTION.

964. Buildings owned by the State.

SECTION.

965. Buildings the State is interested in.

Buildings owned by the State. § 964. The buildings and those appurtenant thereto belonging to the State are—

The State Capitol.

The Governor's Mansion.

The State Arsenal at Milledgeville and Savannah, and the Military Institute at Marietta; the Deaf and Dumb Asylum at Cave Spring; the Lunatic Asylum near Milledgeville; the Penitentiary at Milledgeville; the buildings of the Western and Atlantic Railroad.

§ 965. The State has an interest in—

Partly owned by the State.

The University of Georgia at Athens.

The Asylum for the Blind at Macon.

CHAPTER II.

THE LANDS OF THE STATE.

SECTION 966. Lands reserved to the State.

§ 966. The lands specially reserved to the State are—

Lands owned by the State.

The lands known as the "Macon Reserve" on the Ocmulgee river; the lands known as the "McIntosh Reserve," on which is situated the Indian Spring; the lands known as the "Old Agency Reserve" on the Flint river; a quantity of land on Flint river,

Chapter 2.—The Lands of the State.

opposite the Old Agency; one mile square on the Chattahoochee river at McIntosh Ferry; one mile square at Marshall's Ferry on Flint river, including the ferry; five miles square on Chattahoochee river at Cusseta Falls, including the falls; all islands contained in any of the navigable waters not disposed of, and the western bank of the Chattahoochee river to high-water mark, where it forms the boundary between Georgia and Alabama; so much of the Okefenokee Swamp as is in this State and ungranted; the lots whereon all the public buildings of the State are erected; the fractional parts of surveys created by the different land divisions which are not granted or otherwise disposed of; all lands omitted to be surveyed, granted or sold; parcels of land in certain cities, to wit:

In the city of Atlanta;

In the city of Columbus;

In the city of Chattanooga.*

CHAPTER III.

THE WESTERN AND ATLANTIC RAILROAD AND ITS GOVERNMENT.

SECTION.

- 967. W. & A. R. R. belongs to State, etc.
- 968. Obligations relative to W. & A. R. R.
- 969. What laws apply to W. & A. R. R.
- 970. Former laws still of force.
- 971. Laws applicable to W. & A. R. R.
- 972. Appointment of Superintendent.
- 973. Superintendent's bond.
- 974. His oath and commission.
- 975. Superintendent's authority.
- 976. Rules of road to be recorded, etc.
- 977. Such rules are law.
- 978. Where the road may be sued.
- 979. Demand must be made before suit.
- 980. Books of road *prima facie* evidence.
- 981. Debtors to road—public debtors.
- 982. Appointment, etc., of Treasurer.
- 983. Treasurer's oath.
- 984. His bond; oath and bond, where filed
- 985. Treasurer's duties specified.
- 986. Auditor's appointment, etc.
- 987. Auditor's oath.
- 988. His bond.
- 989. His bond and oath—where filed.
- 990. Auditor's duties specified.
- 991. Remedy against officers W. & A. R. R.

SECTION.

- 992. Compellable to give other security.
- 993. Agents must report monthly.
- 994. Officer failing to pay, etc., dismissed.
- 995. Accounts of dismissed officers.
- 996. Indebtedness of defaulters, etc.
- 997. Oath of all agents of the road.
- 998. Their bonds.
- 999. Bonds renewed annually.
- 1000. Settlements with agents.
- 1001. Governor to examine bonds, etc.
- 1002. Conductor's oath.
- 1003. No credit to be given for freights.
- 1004. Conductor's settlements.
- 1005. Disbursements—how made.
- 1006. How Auditor's decisions reviewed.
- 1007. Proceeds of road—how disposed of.
- 1008. Useless iron and tackle may be sold.
- 1009. Sale may be for cash or on credit.
- 1010. No officer of road can buy at sale.
- 1011. Sale bill to be kept and reported.
- 1012. Useless land of road may be sold.
- 1013. Who may go over road free of charge.
- 1014. Laws of road enforced by Sup't.
- 1015. Transportation of lime.
- 1016. Stock gaps may be built.

* Considerable portions of the above mentioned reservations have been conveyed by the State to private companies or individuals, which will appear by reference to the proper records.

Chapter 3.—The Western and Atlantic Railroad and its Government.

§ 967. The railroad communication from Atlanta, in Fulton County, to Chattanooga, on the Tennessee river, is the property of this State exclusively, and shall be known as the Western and Atlantic Railroad.

W. & A. R. R. the property of the State.

Relation of State to the W. & A. R. R.; reciprocal obligations of the road and the public.

§ 968. The State occupies the same relation to said road, as owner, that any company or incorporation does to its railroad, and the obligations of the State to the public concerning said road, and of the public to said road, are the same as govern the other railroads of this State, so far as is consistent with the sovereign attributes of this State, and the laws of force for its conduct.

Road laws and penal laws apply to W. & A. R. R. proviso

§ 969. All the public road laws and penal laws touching the railroads of this State, whether to obligate or protect, apply to the State Road, unless specially excepted, or some other provision is prescribed in lieu of some one or more thereof.

Laws applicable to W. & A. R. R.

§ 970. [All laws of force regulating the liability of railroad companies in this State for damages done by the running of locomotives, cars, and other machinery, are hereby declared to apply equally to the Western and Atlantic Railroad; and in the bringing of all suits against the Western and Atlantic Railroad, the same shall be regulated by the laws in existence on that subject at the time of the adoption of this Code.] (a)

Preceding laws of force

§ 971. All laws heretofore enacted, having a special or local application to said road, and in force at the time of the adoption of this Code, are kept in force, unless herein repealed expressly, or by implication.

Superintendent appointed by Governor.

§ 972. The principal officer of said road shall be styled the Superintendent, who is appointed by the Governor, and holds his office during his term, unless sooner removed at his pleasure. [The salary of the Superintendent shall be *five thousand dollars per annum.*] (b)

His salary.

To give bond and security.

§ 973. Before entering on the duties of his office, he shall give bond and security, to be approved by the Governor, in the sum of twenty thousand dollars, which shall be filed in the office of the Comptroller General and recorded therein.

To take oath.

§ 974. He shall also, at the same time, besides the oath required of all civil officers, take and subscribe before the Governor the following oath, which shall be filed in the Executive Office:

“I, ———, swear that I will faithfully and impartially per-

Chapter 3.—The Western and Atlantic Railroad and its Government.

form all the duties of my office ; that I will make no appointment, nor do any act from fear, favor, reward, or the hope thereof, but in all things I will be governed solely with regard to the interest of the State of Georgia, and in the discharge of my duties I will neither make, nor permit to be made, any discrimination, unless so directed by legislative authority, in favor or against any railroad company, or other persons or parties having business connections with or relations to said road. So help me God."

§ 975. The Superintendent has authority—

1. To conduct all the operations of said road connected with its repairs, equipment and management, including its financial affairs.
2. To appoint or remove all the subordinate officers subject to the approval of the Governor, except the Auditor and Treasurer.
3. To fix the rate of passage and freight, and to make all necessary arrangements touching such rates and other business with other railroads.
4. To contract for and purchase machinery, cars, materials, workshops, and all other contracts necessary for the general working and business of said road not exceeding three thousand dollars, and over that amount subject to the approval of the Governor in writing.
5. To make contracts with the Government of the United States, with the consent of the Governor, for the transportation of the mails over said road.
6. To arrange the schedules for running trains at such times, either by day or night, as he may deem expedient.
7. To settle all claims against said road, with the approval of the Governor.
8. To sue officially for any claim due the State on account of said road, and defend all brought against the road.
9. To make all necessary rules for the proper conduct of the business of the road and the enforcement of discipline.
10. To impose penalties for a violation of said rules and for breaches of duty by all persons in the employment of the road.
11. To see that the books and accounts of the road are so kept as at all times to show accurately its fiscal affairs.
12. To have settlements weekly with all fiscal agents of said road for all money received by them, by himself or through some authorized person, and to discharge them for neglecting or refusing to do so.

Powers of Superintendent enumerated.

Chapter 3.—The Western and Atlantic Railroad and its Government.

13. To fix the compensation of all employees of said road, with the approval of the Governor, whose compensation is not fixed by law.

14. To draw his warrant on the Treasurer in favor of claimants according to the law.

15. To sue and cause all moneys belonging to or collected on account of the road to be paid promptly to the Treasurer.

16. To exercise a general supervision over all officers, agents, and employees under his charge, and see that they strictly comply with all the requisitions of the law.

17. To make out and transmit to the Governor a quarterly statement exhibiting the receipts and expenditures of the road, and once every year a full statement of all the transactions of the road in detail, which report shall be published in one or more of the public gazettes at the seat of Government and at the city of Atlanta.

§ 976. The rules adopted by the Superintendent for the government of said road shall be recorded in a book kept for that purpose, shall be printed and posted in a conspicuous part of his office and copies placed in the hands of each officer of the road, who shall also be promptly supplied with copies of any alterations thereof.

§ 977. Such rules shall have the force and effect of law when necessary to carry into full effect any law in regard to said road and to improve its organization when not inconsistent with the law.

§ 978. All suits against the road must be brought against the Superintendent in his official capacity in the County of Fulton, where the office of said road is located, except in those cases of claims where by the law other railroads are allowed to be sued elsewhere, but under no circumstances are suits against such road to be allowed against such road, its officers or agents in the State of Tennessee, beyond the right, if any, that may exist under the authority granted to this State to extend said road into Tennessee.*

§ 979. No suits shall be brought against the Superintendent until a demand has been made upon him for payment, accompanied by a statement of the nature of the claim, and ten days shall be allowed the Superintendent to pass upon such claim before suit shall be brought.

* See Venue.

Chapter 3.—The Western and Atlantic Railroad and its Government.

§ 980. In suits pending or to be brought by or against said road, the books of said road shall be *prima facie* evidence of what they contain pertinent to the points in issue. Books of road *prima facie* evidence.

§ 981. All debtors to said road are as debtors to the State or public, and when any question arises warranting it, the right or obligations of both parties are to be determined upon by the laws governing such relation. Its debtors public debtors.

§ 982. The Governor shall appoint an officer for said road, who shall be styled the Treasurer, who holds his office for the same time and term that the Superintendent does. Governor to appoint a Treasurer.

§ 983. Before entering on the duties of his office, besides the oaths required of all civil officers, he shall take and subscribe before the Governor the following oath: His oath.

“I, ———, do swear that I will faithfully and diligently receive, keep, and disburse the funds of the State Road according to law, in my capacity as Treasurer, and do all other acts that are or may be required of me by law as Treasurer of said road, to the best of my skill and knowledge. So help me God.”

§ 984. He shall at the same time give bond and security, to be approved by the Governor, in the sum of one hundred thousand dollars. Said bond and oath of office shall be filed and recorded as the Superintendent's. Bond and security. Bond and oath filed and recorded

§ 985. It is the duty of the Treasurer—

1. To take custody of all funds appertaining to the road, to receive all moneys from officers or agents holding the same and receipt them. Duties of Treasurer enumerated.

2. To receive all such sums as may be appropriated by law for the use of the road.

3. To pay all warrants drawn by the Superintendent in the terms of the law.

4. To pay the State Treasurer monthly all balance in his treasury after paying all the current expenses of the road and other lawful claims upon it, and to take his receipt for the same, retaining such amount as the Superintendent may direct.

5. To keep a book or books to enter all his receipts and payments and other official transactions.

6. To make a quarterly statement to the Superintendent of the receipts and disbursements of his office, which shall be published with the Superintendent's report to the Governor.

7. To discharge such other duties as the laws do or may require.

Chapter 3.—The Western and Atlantic Railroad and its Government.

Auditor appointed by Governor.

§ 986. The Governor shall appoint an officer for said road who shall be styled the Auditor.

His oath.

§ 987. Before entering on the duties of his office, besides the oath required of all civil officers, he shall take and subscribe before the Governor the following oath :

“I, ———, swear that I will promptly, justly, fairly and impartially approve or reject all claims against the State Road presented to me for such purpose, and that I will faithfully and diligently discharge all other duties that are or may be required of me by law as Auditor, to the best of my skill and knowledge. So help me God.”

Give bond and surety.

§ 988. He shall, at the same time, give bond and surety, to be approved by the Governor, in the sum of twenty thousand dollars.

Bond and oath filed and recorded

§ 989. Such bond and oath of office shall be filed and recorded as the Superintendent's.

§ 990. It is the duty of the Auditor—

Auditor's duties enumerated.

1. To examine and approve or reject, without unnecessary delay, all bills and accounts against said road before the Superintendent shall draw a warrant for the same on the Treasurer.

2. To keep a book to enter all accounts passed, stating the person, amount, account, and time.

3. To examine, supervise, and control all books kept by the subordinate accounting officers or clerks of the road.

4. To discharge such other duties as the laws do or may require.

Remedy of the State against officers of W. & A. R. R.

§ 991. The remedy of the State against the Superintendent, the Treasurer, Auditor, and other officers and agents, is the same as against Tax Collectors or Receivers.

Additional bond may be required.

§ 992. The Governor may require each of such officers to give additional bond and surety on the same terms and conditions that he may require it of the Comptroller General or the State Treasurer.

Monthly reports of agents.

§ 993. Each agent of such road having the funds thereof in his hands shall make out monthly, and from month to month, on such day as the Superintendent may require, a full statement of his account, and particularly specify what amount of cash on hand, what amount due from freight delivered or to be delivered, showing the full amount due from all sources whatever, and shall sign such account.

§ 994. Any officer or agent failing to pay over the funds col-

Chapter 3.—The Western and Atlantic Railroad and its Government.

lected by him weekly, or failing to furnish the Superintendent with a monthly statement of the financial condition of his office, except for providential cause, shall be immediately dismissed by the Superintendent.

Defaulting
officer or
agent dis-
missed.

§ 995. When such dismissal shall take place, an account shall at once be had of all the freight on hand, giving the person dismissed a credit or receipt therefor, so as to show the amount of his indebtedness.

Proceedings
on a dismis-
sal.

§ 996. As soon as an agent, or any other person having funds of the road unaccounted for, is in default, and fails to pay over said funds on demand made by the Superintendent, or by his authority, or shall abscond or conceal himself, or in any other way evade or prevent a settlement, said officer shall promptly cause the true amount due by such person to be ascertained, and transmit the same to the Comptroller General as earnings of the road, stating also the date of the default.

Amount
due by de-
faulter treat-
ed as earn-
ings of the
road.

§ 997. Every agent of said road, before entering on the discharge of his duties must, besides the oath required of all civil officers, take and subscribe before the Superintendent, who is hereby made an officer for such purpose, the following oath: "I, ———, swear that I will faithfully perform all the duties of my appointment that are or may be required of me by law, to the best of my skill and knowledge, and that I will render a true account of my official conduct, and of all moneys received by me as such, and pay the same over to the person authorized to receive them, as often as the law may require. So help me God."

Oaths of
agents.

§ 998. They shall at the same time give bond and surety, payable to the Governor and his successors in office, to be approved by the Superintendent, in such sum as he may require.

Bonds of
agents.

§ 999. The oaths shall be filed in the office of the Superintendent, the original bonds transmitted to the Comptroller General, and copies retained by the Superintendent in a book kept for that purpose in his office.

Disposition
of affidavit
and bond.

§ 1000. Such bonds shall be renewed annually, by the tenth day of January, after a full and satisfactory settlement has been had with the agents, and not before.

Bonds re-
newed annu-
ally.

§ 1001. Said settlement must be in writing and signed by the agent and Superintendent, and shall contain a full statement of the agent's account with the road, whether for cash received, freight on hand, or from any other source whatever.

Settlements
with agents

Chapter 3.—The Western and Atlantic Railroad and its Government.

§ 1002. The Governor shall examine every bond transmitted to the Comptroller General by the Superintendent, and in case of defect therein, as to matter or surety, may order another bond given in lieu thereof to the Superintendent, and he or the Superintendent may at any time, when in the judgment of either the interest of the State requires it, require such officer to give additional bond and sureties, as he requires of other officers.

§ 1003. Every conductor must, in the same manner, take and subscribe this oath: "I, ———, swear that I will faithfully discharge the duties of my office to the best of my skill and knowledge, and that I will pay over all the money that may come to my hands belonging to the State Road, as required by law, or the order of the Superintendent. So help me God."

§ 1004. No agent at any station of said road is permitted to give credit for any freight or any produce, goods, or other commodity conveyed, but shall collect the freights before the articles are taken away, except in cases where the freights, by arrangement, are chargeable to some other railroad company.

§ 1005. Every conductor of passenger or freight trains shall make a settlement of the tickets and money received by them with the Treasurer at the end of each trip. All disbursements made on account of said road shall be, by warrant of the Superintendent, drawn upon the Treasurer, and be first passed by the Auditor.

§ 1006. The Superintendent may refuse to ratify the approval of the Auditor, and when so refusing the claim shall be presented to the Governor to decide; if he allows the claim, or any part thereof, the Superintendent shall draw his warrant and express therein, "By approval of the Governor." If he concurs with the Superintendent, the party may accept the decision or bring suit.

§ 1007. The proceeds of said road, after deducting expenses and all debts, which are liens upon its income, shall be paid into the treasury of the State monthly, and shall first be applied to the payment of the principal and interest of the bonds of the State issued on account of said road.

§ 1008. Whenever any iron, or any tackle or apparel may become useless to said road, and the Superintendent can not have the same converted into new iron on reasonable terms, or for any other good reason, he shall sell the same at public outcry, at whatever point it may be most to the interest and convenience of the road, to the highest bidder, after giving at least thirty days'

Bond to be examined by Governor and additional bond may be required.

Conductors' oath.

No credit for freight.

Conductor's settlements.

Disbursements—how made.

Cases where Superintendent and Auditor differ.

Proceeds to be paid monthly into Treasury.

How applied

Useless iron, etc., shall be sold on 30 days' notice.

Chapter 3.—The Western and Atlantic Railroad and its Government.

notice of the time and place of said sale, with a description of the property, in a public gazette at Atlanta.

§ 1009. He may sell said property for cash or credit, as in his discretion it may be best for the State; *provided*, that, if on credit, it shall not be longer than twelve months, with note or bond and personal security thereto, payable to the Governor and his successor in office, or bearer, which shall be deposited in the State Treasury, and when collected be as part of the net earnings of the road.

Sale may be for cash or on credit. Proviso.

Proceeds of sale.

§ 1010. Neither the Superintendent, nor any officer of the State Road, shall be a purchaser, directly or indirectly, at said sales, on pain of forfeiting to the State the property purchased and price paid, and of being removed by the Governor.

Officer not to be a purchaser.

§ 1011. The Superintendent shall keep a record of all such property sold, to whom sold, at what price, and on what terms, and shall embrace the same in his report to the Governor.

Record of sales to be kept.

§ 1012. The Governor or Superintendent shall not sell any part of the right of way, nor any property or land of the road, that may be necessary for the erection of depots, wood yards, water stations, or for any other improvement to the convenience or interest of said road; but they may sell any land of the road if of no use to it, in the manner iron is sold—advertising it in a public gazette at Atlanta, and in the County where it lies, and in a public gazette thereof, if one, and the Superintendent shall execute deeds thereto in his official capacity.

Restriction on sale of road property.

Land may be sold.

§ 1013. All lunatics and idiots, and the persons having them in charge, not more than one to each of such, when sent from any County to the Lunatic Asylum, and the latter returning, and all deaf and dumb and blind pupils partaking of the State's bounty, with their necessary attendants, when going and returning from their schools, shall go from and return to their homes, free of charge on said road.

Persons traveling free of charge on the road.

§ 1014. The Superintendent of said road is specially charged with the due execution and faithful fulfillment of all the laws for the government and regulation of the same.

Superintendent to enforce the laws, etc.

§ 1015. Said road shall transport lime for agricultural purposes, by the car load, from any depot thereof to Atlanta, from the first day of May to the first day of August of each year, or at any other time not conflicting with the interest of said road, at a rate not exceeding three cents per bushel; *provided*, connecting

Lime—transportation of.

Chapter 4.—Stocks.

roads at Atlanta will transport lime for agricultural purposes at corresponding low rates, and give the Superintendent of the road notice thereof, with consent to be bound permanently by such rate. Any connecting road at Atlanta failing to give such notice and consent shall not be entitled to the benefits intended to be secured to the agricultural interest contiguous to such road. Before any person shall transport lime on said road, or any road in connection therewith, at said rate, he shall make oath in writing before receiving said lime and paying said freight, that it has been or is to be transported for and will be used in good faith in improvement of the soil in the State; which affidavit shall be filed in the office of the company to whom the freight is paid.

§ 1016. [All persons in this State owning land through which the Western and Atlantic Railroad passes shall have permission to build stock gaps on said road when the line of their fences may cross the same, and shall have the privilege of joining their fences to such stock gaps: *provided*, said land owners shall not improperly interfere with the bed of said road, or render it less safe, or interfere with the running of the trains thereon.] (a)

Land owners may build stock gaps.

CHAPTER IV.
STOCKS.

SECTION.	SECTION.
1017. Bank stock owned by State.	1019. Stock in Main Trunk Railroad.
1018. Railroad stock owned by State.	

Bank stock owned by State.

§ 1017. The State owns the following bank stock—
In the Bank of the State of Georgia.....1833 shares.
In the Bank of Augusta..... 890 “
In the Bank of Georgia Railroad and Banking Company..... 186 “

Railroad stock.

§ 1018. The State owns the following railroad stock—
In the Main Trunk Road 5000 shares.

Extension of stock in Main Trunk Railroad.

§ 1019. The stock in the Main Trunk may be extended to ten thousand shares, on the condition that the State shall own as she does now, five-elevenths to be taken when individuals take and pay for the balance according to the act of incorporation and acts amendatory thereof.

(a) Acts of 1865-6, pp. 261-2.

CHAPTER V.

OTHER PUBLIC PROPERTY.

SECTION 1020. Library, furniture, arms, etc.

§ 1020. The State owns the Library at the Capitol, the furniture and contents of her various public buildings, and the public arms, munitions, and accouterments of war in her arsenals and in the charge of her several volunteer companies, and of the Superintendent of the Military Institute.

Library, arsenal contents and mis. property of State.

TITLE X.

PUBLIC PRINTING.

CHAPTER I.

PUBLIC PRINTER: HIS DUTY AND COMPENSATION.

SECTION.

- 1021. Election of Public Printer.
- 1022. He must give bond.
- 1023. On failure to give other bond, etc.
- 1024. Vacancy—how supplied.
- 1025. Damages for breach of bond.
- 1026. Place of printing, etc.
- 1027. Printing during Legislature.
- 1028. Failure vacates office.
- 1029. When Printer's duties begin.
- 1030. What he must print.
- 1031. Ordered matter—how printed.

SECTION.

- 1032. Laws and Journals—how printed.
- 1033. Style of the printing.
- 1034. Manuscripts to be furnished.
- 1035. Number copies Laws and Journals.
- 1036. If insufficient others may be printed.
- 1037. Printed matter—delivered to whom.
- 1038. Compensation of Printer.
- 1039. Penalty for delay.
- 1040. Contract and bond of new Printer.
- 1041. Pay of removed Printer.
- 1042. Work of deceased Printer.

§ 1021. [The General Assembly shall biennially elect a Public State Printer, at the same session and in like manner with the State House officers of the State, and said State Printer shall hold his office for and during the term of two years.] (a)

Election of Public Printer.

§ 1022. Within ten days from the day of his election he shall give a bond, with good surety, in the sum of ten thousand dollars, to be approved by the Governor, filed in the Executive Office, and recorded in the office of the Secretary of State.

His bond.

Chapter 1.—Public Printer: his Duty and Compensation.

§ 1023. The Governor is authorized to require from the Public Printer additional bond and surety as he may from a State House officer, and on his failure to comply, declare a vacancy.

Legislature
to supply va-
cancy.

§ 1024. If the General Assembly is in session when such failure occurs, the Governor shall communicate the fact to them, when they shall supply the vacancy by election.

Additional
bond may be
required, etc.

§ 1025. If a Public Printer, after having been elected and given bond, commits a breach of it, on the trial the jury shall assess not less than one thousand nor more than three thousand dollars as liquidated damages, besides the actual damages sustained.

Damages
on breach of
bond.

§ 1026. Such Printer and his sureties must be citizens of this State, and the public printing must be *bona fide* performed within her limits, unless special permission otherwise is obtained from the General Assembly.

Printer and
sureties to be
citizens.

§ 1027. All printing specially ordered by the proper authority during a session of the General Assembly shall be executed with all possible dispatch and correctness, at the seat of Government.

Printing
during ses-
sion.

§ 1028. If the provisions of the two preceding Sections are violated, the Governor may, in his discretion, declare a vacancy and the compensation forfeited.

Violation of
last two sec-
tions.

§ 1029. The duties of the Public Printer do not begin until the first day of the next session of the General Assembly after his election.

Beginning
of Printer's
duty.

§ 1030. He shall print the Laws and Journals, and such bills, reports, and other documents as may be ordered to be printed during his term of office, which includes the printing of all extra sessions held during that time.

What he
must print.

§ 1031. All papers ordered to be printed by either House shall, unless otherwise directed, be printed upon paper that can be easily written upon; the sections and lines must be numbered, having sufficient margin and intervening space to admit of interlineations, for which service the Governor shall allow extra compensation, not exceeding twenty per cent. on the established rates.

How print-
ing must be
done.

§ 1032. The Laws and Journals must be printed upon small pica type, on good paper, and delivered to the Executive within ninety days after the manuscripts are received from the compiler.

Laws and
Journals—
how printed
and deliver-
ed.

§ 1033. The former must be printed of a uniform size, and of a style equal in mechanical execution to the Laws of 1853-4, and the latter must be on pages the size of the Laws of the United States, and have like intervals between the paragraphs.

Directions
as to Laws
and Journ-
als.

Chapter 1.—Public Printer: his Duty and Compensation.

§ 1034. The Secretary of the Senate and Clerk of the House shall furnish the manuscripts of their Journals and indexes thereto, properly prepared for the press, within twenty days from the adjournment of each session of the General Assembly, under a penalty of five hundred dollars each, to be retained out of their pay.

Sec. of Senate and Clk. House to furnish MSS.

§ 1035. There shall be printed [two] (a) thousand copies of the Journal of each branch of the General Assembly, and [four] (a) thousand copies of the Laws, to be bound by said Printer in durable style and equally as well as the Laws of 1853-4.

Number of Journals and Laws.

§ 1036. If such number should prove to be insufficient for the use of the State, the Governor may order such additional copies as in his opinion the public interest may require, and allow therefor reasonable compensation.

Additional copies may be ordered.

§ 1037. As the public printing progresses the Printer must, from time to time, with all possible dispatch, deliver the printed matter to the State Librarian, at his office, free from any expense to the State for transportation.

Printed matter to be delivered to Librarian.

§ 1038. If said Printer shall legally and faithfully perform his duties, he shall be compensated as follows: [He shall be paid thirty per cent. on the actual cost of the material and labor employed in the public printing, *provided*, that before being paid, he shall make out an account, on oath, of the actual cost of the material and labor employed, and present the same to His Excellency the Governor, who may allow or reject said account or any part thereof, as in his judgment may seem right and just.] (b)

Compensation of Public Printer.

§ 1039. Should any delay occur in the prompt delivery of the Laws and Journals as required, the Governor shall deduct at the rate of ten per cent. per month for the particular work delayed, until the date of delivery. If the delay shall be protracted more than six months, the Governor may remove the Printer from office. If any portion of the work is not executed so as to be a substantial compliance with the requisitions of the law, the Governor shall reject it, and order it executed over, or appoint a new Printer, as his judgment shall dictate or the emergency may require.

Forfeiture for delay in delivery of Laws and Journals.

§ 1040. When a new Printer is appointed under the two preceding Sections, he shall give such bond and surety and on such conditions as the Governor may require, who is also authorized to make a special contract for the public printing in such an event.

New Printer to give bond.

Chapter 2.—Other Printing.

§ 1041. When the Printer is removed, the Governor is authorized to take such portion of his work as he has executed according to law, and allow him lawful compensation therefor, but he must deduct therefrom the least penalty, and the damages sustained by his failure.

A quantum meruit may be paid to a removed Printer.

§ 1042. When the Printer dies before completing his work, his legal representatives are allowed to do so, it being understood that all bonds of Public Printers cover such contingency, and the Governor is authorized in such an event to wait thirty days for an assurance of such performance.

Representative of deceased Printer may complete work.

CHAPTER II.

OTHER PRINTING.

SECTION.

1043. How other printing is done.

SECTION.

1044. Public Printer entitled thereto.

§ 1043. All printing other than that performed by the Public Printer, which necessity may demand, shall be printed at the seat of Government, or such other place as may be necessary, in the discretion of the Governor, under his direction and supervision, upon reasonable rates, to be paid for out of the contingent fund.

Directions as to printing other than public printing.

§ 1044. If the Public Printer executes his work at the seat of Government, or at the place where the printing referred to in the preceding Section is required to be done, he is entitled to perform such printing if he will do so at reasonable rates.

Public Printer preferred.

CHAPTER III.

THE COMPILER.

SECTION.

1045. Compiler—how appointed, etc.

1046. His duties specified.

1047. Penalty for failure.

SECTION.

1048. Another appointed—when.

1049. Compiler's compensation.

Compiler of Laws to be appointed.

§ 1045. The Governor shall appoint some competent person to prepare and compile the several acts of each session of the General Assembly, which appointment must be made at any time in his discretion, provided it is done before such session adjourns.

§ 1046. It is the duty of the Compiler—

Chapter 3.—The Compiler.

1. To distinguish, in his classification, the public laws from those that are local or private, and to arrange the former under appropriate heads. Duty of Compiler.

2. To prepare for publication side and head notes for reference.

3. To add notes referring back to such previous legislation as may be modified or repealed, and notes giving the decisions of the Supreme Court since the last publication of the Acts upon the subject matter of each act of a public nature.

4. To prepare and append a copious index.

5. To furnish the Public Printer with a fair copy of all work required of him in the preceding portion of this Section within forty days from the adjournment of the session.

6. To read the proofs of the same, and carefully compare them with the certified copies.

§ 1047. If a Compiler fails to perform his work in the time allowed he forfeits his compensation, unless in the opinion of the Governor he has a satisfactory excuse. Failing to perform his work.

§ 1048. If he dies or becomes disabled before completing his work, and so as he can not finish it within the time prescribed, the Governor shall appoint another Compiler to finish it, and apportion the compensation ratably between them. If he dies or becomes disabled.

§ 1049. He is under the supervision of the Governor, and must enter upon and continue in the discharge of his duties as the Governor may order, and shall receive for his services compensation to be fixed by the Governor, not exceeding [seven hundred and fifty dollars; *provided* the Compiler shall employ such assistance as may be requisite to have the Laws ready for distribution in the shortest possible time, to be judged of by the Governor.] (a) His compensation.

CHAPTER IV.

DISTRIBUTION OF THE LAWS AND JOURNALS AND OTHER DOCUMENTS.

SECTION.

- 1050. Laws and Journals to be distributed
- 1051. Number of copies for each County.
- 1052. Five copies Journals for each County
- 1053. Clerk to keep two bound Journals.
- 1054. Reserved copies of Laws.
- 1055. Acts of Congress for each County.
- 1056. Distribution—how let out.

SECTION.

- 1057. Distributors must give bond.
- 1058. Damages for breach of bond.
- 1059. Bonds—where filed.
- 1060. When Gov. may appoint distributors
- 1061. Residence of distributors.
- 1062. Distribution in advance.

(a) Acts of 1865-6, p. 251.

Chapter 4.—Distribution of the Laws and Journals and other Documents.

§ 1050. After the Laws and Journals are compiled, printed, bound, and delivered to the State Librarian, he shall, under the supervision of the Governor, cause them to be distributed to the several Counties of this State.

Laws and Journals to be distributed.

Copies of Laws for each County

§ 1051. Each County is entitled to one copy of the Acts of the General Assembly for each civil officer, both judicial and ministerial, to be distributed by the Clerks of the Inferior Courts under the order of the Justices.*

Copies of Journals for each County.

§ 1052. Each County is entitled to [ten] (a) copies of the Journals of each branch of the General Assembly, which are to remain on deposit in the office of the Clerk of the Inferior Court, and to which the citizens of the County shall have free access; also a copy of the Laws and Journals for each member of the General Assembly.

Journals to be bound.

§ 1053. Two of the copies of the Journals of each branch of the General Assembly shall be as well bound as the "Acts"—one by such Clerk at the expense of the County, securely kept, and not permitted to go out of his office.

Reserved copies.

§ 1054. The Librarian shall reserve five hundred copies of the Acts for such further distribution as the General Assembly may order.

Acts of Congress.

§ 1055. Each County is entitled to two copies of the Acts of Congress, to be kept in the office as the Journals are.

Advertisement to distribute Laws and Journals

§ 1056. Immediately upon the adjournment of each session he shall advertise in one paper in the cities of Augusta, Atlanta, Athens, Columbus, Macon, Milledgeville, Rome, and Savannah, for proposals to distribute the Laws and Journals and other books and documents required by law to be distributed, for one distributor of such for each Congressional District within sixty days from the time received.

Distributor to give bond.

§ 1057. Before beginning the work each distributor shall give a bond, with good security, in the sum of five hundred dollars, to be approved by the Governor, conditioned for the prompt and faithful delivery of the books (specifying them) to the Clerks of the Inferior Courts of the several Counties therein named within thirty days from their receipt.

Damages for breach of bond.

§ 1058. If not done within the time and in the manner, the whole bond is recoverable as liquidated damages, providential causes only excepted.

* See Acts of 1861, p. 75. (a) Acts of 1861, p. 75.

Chapter 1.—Persons Subject to Military Duty, Exemptions, etc.

§ 1059. Such bonds must be filed and recorded in the Executive Office. Bond filed and recorded

§ 1060. If no person applies for the distribution of any district, the Governor is authorized to appoint such distributor. Distributor —when appointed.

§ 1061. The Librarian is required to select an applicant for a Congressional District, if physically and mentally capable of the service and gives the requisite bond and security. Preferred distributors.

§ 1062. [So soon as the Laws are ready, notice of the fact being given in the papers at Milledgeville, the number of copies assigned to any County shall be delivered to the order of the Clerk of the Inferior Court of said County, or sent as may be directed by him, in advance of the distribution hereinbefore provided for.] (a) Distribution in advance.

TITLE XI.

PUBLIC DEFENSE.

CHAPTER I.

PERSONS SUBJECT TO MILITARY DUTY, EXEMPTIONS, ETC.

SECTION.

- 1063. Persons subject to military duty.
- 1064. Persons exempt.
- 1065. Officers of militia—when exempt.
- 1066. Non-commissioned officers, etc.
- 1067. Persons employed on vessels, etc.
- 1068. Persons subject must be registered.
- 1069. Oath of persons, etc.
- 1070. May perform service or pay tax.

SECTION.

- 1071. Commutation tax—how avoided.
- 1072. Company drills—four in each year.
- 1073. Volunteers exempt from road duty.
- 1074. Amount of commutation tax.
- 1075. Receipt therefor.
- 1076. Transient persons—when subject.
- 1077. Free men of color—how subject.

§ 1063. All able-bodied free white male citizens between the ages of twenty-one and forty-five years, residents in this State, and not exempted by this Code, are subject to military duty. Who are subject to military duty.

§ 1064. The following exemptions shall be recognized—viz:

1. The chief officers of the several Executive Departments of State. Who are exempt.

2. Judges of the Supreme, Superior, and City Courts, Justices

(a) Acts of 1865–6, p. 251.

Chapter 1.—Persons Subject to Military Duty, Exemptions, etc.

of the Inferior Courts and of the Peace, Sheriffs and deputies, Clerks of Courts, and Ordinaries.

3. Members of the Legislature during the term for which they shall be elected, officers of the Legislature during its session and for seven days before and after the same.

4. Persons employed on railroad trains, and repairers of railroads, operators and messengers of telegraph companies, postmasters and persons employed in post-offices and the transportation of the mails.

5. Ferry-men, bridge and toll gate keepers, and public millers.

6. Ministers and preachers of the gospel, professors and students, and tutors in all colleges.

7. Aliens and persons not qualified to vote for members of the Legislature.

8. All persons exempted by the acts of Congress.

9. All persons on the payment of the commutation tax prescribed by this Code.

10. All officers and non-commissioned officers of the militia who may entitle themselves to the privileges as hereinafter prescribed.

11. Active members of volunteer corps after a prescribed term of service.

12. Regular members of any fire department or organization connected therewith.

§ 1065. Company officers of the militia who shall uniform and equip themselves according to the regulations prescribed for the dress and uniform of the army of the United States, and shall serve in their respective stations continuously for the term of eight years, shall not be liable to be called on for military duty thereafter, except in case of war, insurrection, rebellion, or invasion.

Militia officers—when exempt.

Exception.

§ 1066. Every non-commissioned officer, musician, or private, of every uniform volunteer corps, who shall uniform and equip himself and whose term of service shall amount to seven years, shall also be exempt from military duty, except in case of war, rebellion, insurrection, or invasion.

Non-commissioned officers, musicians and privates.

Exception.

§ 1067. Every person employed by the year or season on board any vessel, or in the merchant service, or coasting trade, all pilots and stevedores, persons employed in any blooming furnace, or glass or porcelain factory, cotton or wool mill, shall be exempt from militia duty, except in cases above enumerated.

Employees on vessels, pilots, stevedores, factory laborers, exempt.

Exception.

Chapter 1.—Persons Subject to Military Duty, Exemptions, etc.

§ 1068. Receivers of Tax Returns shall, at the time of receiving returns of taxable property from the citizens of this State, insert in appropriate columns in their digest the following particulars—viz :

- | | |
|--|---|
| 1. Whether the tax payer is himself subject to militia duty. | Liability of tax payer. |
| 2. How many in his employ, or members of his family, are subject. | His family and employees. |
| 3. The cause of exemption, if any exists. | Cause of any exemption. |
| 4. The company district or beat to which the tax payer belongs. | His district. |
| 5. The amount of commutation tax chargeable to him instead of personal service; and the amount so charged shall be collected by the Tax Collector and paid over to the Treasurer of the State with the general tax, and shall constitute the military fund of the State. | Also amount of his commutation tax
Commutation tax collected by Tax Collector. |

§ 1069. No Receiver of Tax Returns shall enter an exemption from military duty against the name of any person without due proof of the existence of the cause on which the exemption is claimed, and to that end the following clause shall be added to the oath administered by the Receiver of Tax Returns: "And that I believe myself exempted from militia duty in this State for and on account of the cause set forth in this return."

§ 1070. Every citizen subject to military duty may perform the same in lieu of paying the taxes herein prescribed, but the certificate of the captain or commanding officer of the company to which he belongs and in which he is actually enrolled shall be the only evidence which the Tax Collector is authorized to receive in place of the amount charged on the Receiver's digest, and the production of which shall be noted by the Tax Collector on his return, and he shall be allowed the same in settlement.

§ 1071. The captain or commanding officer in each company district shall enroll, from time to time, all persons in the limits of the district subject to military duty, and shall, without delay, notify such persons of their enrollment, and shall give a certificate to each person performing military duty that he has faithfully performed the same, according to the requirements of the Code, for twelve months preceding the 31st day of December in each and every year, and such certificate shall be produced at the time of returning his taxable property, and on failure so to do, the commutation tax for militia duty shall be charged against him on the book of the Receiver of Tax Returns.

Chapter 1.—Persons Subject to Military Duty, Exemptions, etc.

§ 1072. Captains of companies shall cause to be mustered for parade and drill all persons within their company districts who do not pay the commutation tax, the only proof of which payment shall be the receipt of the officer authorized to collect the same, and who are not otherwise exempt, at least four times in each year, at such times as they may direct; but there shall be an interval of at least one month between each muster, and they shall file a copy of their company roll with the Clerk of the Inferior Court immediately after the muster which succeeds the closing of the books of the Receiver of Tax Returns, for which service they shall respectively receive the sum of one dollar.

§ 1073. Members of volunteer corps actually in uniform and doing duty, and the field and staff officers of volunteer regiments and battalions, so long as they remain such, shall be exempted from road and patrol duty, and taxation upon property by any municipal corporation, except such as shall be liable to taxation by law to raise a revenue for the State.

§ 1074. The commutation tax for non-performance of militia duty shall be ten per cent. upon the State tax, provided it shall always amount to twenty-five cents, and shall be collected and paid as other taxes are collected and paid into the Treasury; the amount thus raised shall be set apart as a separate fund chargeable with the entire military expenses of the State.

§ 1075. The Tax Collector's receipt to the tax payer shall distinctly specify the payment of the commutation tax for militia duty, whenever paid, in order that the same be made available in case of enrollment by the captains of militia districts or beat companies.

§ 1076. Transient persons having a place of business, and doing business in the State, but having no residence or home therein, are liable to militia duty, and on failure to pay the commutation tax, or perform military service, shall be liable to an additional penalty not exceeding twenty dollars, to be adjudged by any court martial, within whose jurisdiction they may happen to be for a period of ten days.

§ 1077. Free men of color above the age of sixteen years, unless belonging to the fire department, shall be subject to the call of any volunteer military organization, if there be one in the town or city of their residence, in the capacity of musician, pioneer, mechanic, or servant, and if there be such volunteer organiza-

Article 1.—Military Force—how Composed.

tion, then to the militia in one of the aforesaid capacities, and they shall be entitled to the usual wages for the practice of such occupations; but on failure so to attach themselves, when required so to do, they shall pay to the Clerk of the Inferior Court, for the use of the County in which they reside, the sum of five dollars.*

Entitled to wages.

Failing to serve.

CHAPTER II.

MILITARY ORGANIZATION.

ARTICLE 1.—*Military Force—how composed.*

ARTICLE 2.—*The Volunteers.*

ARTICLE 3.—*Cavalry Corps.*

ARTICLE 4.—*The Militia.*

ARTICLE 5.—*Elections.*

ARTICLE I.

MILITARY FORCE—HOW COMPOSED.

SECTION.

1078. The military force of the State.

SECTION.

1079. The engineer corps of the State.

§ 1078. The military force of the State embraces the Georgia Military Institute, the volunteers, and the militia, to which may be added such military schools, when the institution is of a military character, as may avail themselves of the provisions herein embraced.

Military force.

§ 1079. The Georgia Military Institute constitutes the engineer corps of the State, and the officers in the Institute having military rank in the academic staff (cadet officers excepted), shall be commissioned as such according to their respective grades. (See Military Institute.)

The engineer corps.

* This section retained because specially enacted by Acts of 1865–6, page 227, although it would seem to be contrary to the Constitution, and laws changing the *status* of free persons of color.

Article 2.—The Volunteers.

ARTICLE II.

THE VOLUNTEERS.

SECTION.

- 1080. Volunteer forces of the State.
- 1081. Battalions in respective Counties.
- 1082. Their rights, privileges and duties.
- 1083. Number of officers, etc., necessary.
- 1084. Companies—how organized.
- 1085. Arms, etc., supplied—when.
- 1086. Discipline and exercise prescribed.
- 1087. Must make annual returns.
- 1088. Independent companies disbanded.
- 1089. Resignation of captain.
- 1090. Regiments and battalions, etc.
- 1091. May adopt by-laws.

SECTION.

- 1092. Fines—how imposed and collected.
- 1093. Elections—by whom ordered.
- 1094. When by Commander-in-Chief.
- 1095. Commissions vacated—when.
- 1096. Suits on bonds of officers.
- 1097. Disbanded companies, etc.
- 1098. Artillery companies received, etc.
- 1099. Volunteer companies corporate.
- 1100. Courts Inquiry and Courts Martial.
- 1101. Volunteers exempt, etc.
- 1102. Cumulative provisions.

The volun-
teer force.

§ 1080. The volunteers consist of such corps, uniformed and equipped, as now exist, or may hereafter be formed in this State. They may organize themselves into companies, battalions, regiments and brigades, at their option; but the whole volunteer force shall constitute one or more divisions conforming to the organization of the United States Army, except when otherwise prescribed in this Code. As soon as such shall be organized, they shall be reported to the commander-in-chief, and shall remain permanent until changed by his approval or by special enactment.

Battalions,
regiments,
etc.

§ 1081. Battalions and regiments shall be organized always within the limits of their respective Counties, if there are companies enough in a County; if not, then to be added to from adjoining Counties, unless companies in other Counties are more accessible, to be judged of by the commander-in-chief.

Rights and
duties.

§ 1082. When thus organized, they have the same rights, privileges, and are subject to the same duties as such organizations in cities. If there are not companies enough in a city to form a battalion or regiment, it may be formed by the addition of other companies in the same County, if such exist, and if not, then from adjoining Counties.

Volunteer
corps formed
in any part
of the State.

§ 1083. Volunteer corps may be formed any where within the State, and may consist of citizens of the same or adjoining Counties. Such as may hereafter be formed shall number at least forty privates, nine non-commissioned officers, four commissioned officers, with such musicians as they may deem sufficient.

§ 1084. When the requisite number of members are enrolled, their first duty shall be to uniform themselves according to the

Article 2.—The Volunteers.

provisions of this Code; they shall then notify the commander-in-chief of the number enrolled and uniformed, who shall order an election for captain and subaltern officers under such superintendence as he may prescribe, and the superintendents shall transmit the return of the same to the Executive Department, and the Governor shall commission the officers elected, unless the election is contested; in which case, if in the opinion of the Governor there be sufficient grounds to set the same aside, he shall order a new election.

When enrolled to report to commander-in-chief.

Election of officers.

§ 1085. Arms and accouterments shall be supplied to the volunteer corps, whether uniformed or not, by requisition on the Governor, in such manner and upon such terms as he may direct, from the quota of arms distributed to the several States under the laws of Congress, or from other arms belonging to this State.

Arms, etc., to be supplied to all volunteer corps.

§ 1086. The system of discipline and exercise shall, as near as may be, conform to that prescribed for the army of the United States, from time to time, by Congress, but the commander-in-chief may direct such text books for use as a guide in such arms as he may think proper, and no other weapons of war than such as are used by the soldiers of the army of the United States, except by order of the commander-in-chief, shall be used by the volunteers.

Discipline and exercise.

Arms to conform to those of U. States.

§ 1087. All volunteer corps, except such as may be organized into regiments, shall make a full return to the Governor of the number of men in each corps actually in uniform, the number and rank of the officers, the arms and accouterments in their possession supplied by the State, and the number of such as may be unfit for use or expended in service, which return shall be made up to the first day of May in each year, and signed by the captain of such corps.

Independent corps to make annual returns to Governor.

§ 1088. Whenever it shall appear to the commander-in-chief that any independent volunteer corps is deficient in the number of men required by this Code to constitute a company, he shall issue an order requiring the return of such equipments as may have been furnished by the State, and disband such corps, but the provisions of this paragraph shall not apply to any volunteer corps formed previous to the adoption of this Code, or to any corps attached to and constituting a portion of a regiment of volunteers.

Independent corps disbanded — when.

Exception.

§ 1089. The resignation of a captain of an independent volunteer corps shall not take effect until accepted by the commander-

Resignation of captain.

Article 2.—The Volunteers.

in-chief, nor until a full return is made to the Governor of all the arms and accouterments received from the State and in possession of the corps under his command, inventoried and ready to be turned over to his successor, and as often as a captain is elected he shall receipt to his predecessor for the arms and accouterments so turned over to him.

§ 1090. When volunteer corps are organized into a regiment or a battalion, the company returns shall be made to the adjutant, and by him forwarded to the Executive Department.

Returns of
regimental
companies.

§ 1091. Volunteer corps may adopt their own by-laws and regulations, not inconsistent with the laws of the State or military laws or usage, and may adapt them in such mode as they see proper to their organization into a regiment or a battalion. The commander-in-chief shall prescribe the uniform of volunteer corps, and in all matters not provided for in this Code such corps shall be governed by military law and usage and the custom of the army of the United States, so far as they can be made applicable.

Companies
may adopt
by-laws, etc.

General rule
of discipline.

§ 1092. All fines for delinquencies in military duty shall be assessed by regimental, battalion, or company courts martial, as the case may be, and be collected by execution under the hand and seal of the President of the Court, and directed to the Sheriff of the County in which the delinquent resides, and the Sheriff shall be entitled to such costs and subject to be ruled in the Superior Court, and the execution shall have like form and effect as in civil cases. The Sheriff may procure the service of such executions by a Bailiff, he being responsible therefor as though it were his own act.

Fines to be
imposed by
court martial

§ 1093. All elections for officers of the volunteers and to fill vacancies shall be ordered by the officer within whose immediate command the vacancy to be filled occurs. For subalterns, by captains of the companies in which the vacancy exists, unless the company be attached to a battalion or regiment; for regimental officers, by colonels; for colonels, by the brigadier-general of the regiment, he being attached to a brigade; for brigadier-general, by the general of division.

Election for
officers—
how ordered

§ 1094. In case of a regiment not attached to a brigade, or of a company not attached to a regiment or a battalion, elections for colonel and captain shall be ordered by the commander-in-chief, and when an independent battalion exists, not belonging to a regiment or brigade, the election for its commander shall be ordered by the commander-in-chief.

Elections in
an independ-
ent regi-
ment or
company.

Article 2.—The Volunteers.

§ 1095. Whenever a volunteer corps is disbanded, the commissions of its officers shall be vacated, but they shall, nevertheless, be liable to suit on the bond executed for the safe keeping and delivery of the arms entrusted to them, by the State, if there should be a breach thereof.

Commissions to expire—when.

§ 1096. Suits on the bonds of officers of volunteer companies for arms and accouterments shall be brought under the direction of the judge-advocate-general, in whose office such bonds shall be filed for safe keeping.

Suits on officer's bond.

§ 1097. When any volunteer corps disbands of its own accord, the members thereof shall cause the fact to be reported to the commander-in-chief, and they shall forthwith deliver to some officer of the quartermaster-general's department all the public property in their possession, and upon filing his receipt therefor with the judge-advocate-general, a discharge shall be entered on their bond.

Corps voluntarily disbanding.

§ 1098. Whenever the commanding officer of any volunteer artillery company in this State shall certify to the Governor that there are sixty active members, officers and privates, upon the muster roll of such company, (a copy of which muster roll shall accompany the certificate,) and that said company has been exercised in the field with its guns for not less than two hours at each drill, and not less than twelve drills in each year, the Governor shall draw his warrant upon the Treasurer of the State for the sum of two hundred dollars, to be paid into the fund of said company; *provided, nevertheless*, that the provisions of this Section shall not extend to more than seven companies, not including such companies as may be already organized, and who may comply with the provisions of this Section.

\$200 to be paid to artillery companies.

§ 1099. Volunteer companies of infantry, cavalry or artillery, which have been or may hereafter be organized, with not less than forty members, and have their officers duly commissioned, are made a body corporate and politic, under their respective names and styles, and made capable in law to sue and be sued, to plead and be impleaded, to have a common seal, to hold property, real, personal or mixed, and to pass such by-laws, rules and regulations as may be necessary for their government, not inconsistent with the laws and Constitution of this State or the United States.

Volunteer companies incorporated.

§ 1100. Courts of inquiry and courts martial, for companies incorporated by the provisions of this Code, shall be constituted and regulated by the laws in force relating to volunteer companies.

Courts of inquiry and courts martial.

Article 3.—Cavalry Corps.

Members of volunteer corps exempt from road or militia duty. *Proviso.* § 1101. Each member of any company incorporated by the provisions of this Code shall be exempt from road or militia duty, except such as may be required of them as members of their respective companies, and except in times of insurrection, invasion, rebellion, or war; *provided*, the commanding officer of any company so incorporated shall have recorded in the offices of the Clerks of the Superior and Inferior Courts of their respective Counties, a full and complete list of the members of their company, and that the above exemption shall continue no longer than actual membership.

Certain sections cumulative. § 1102. The five preceding Sections shall be held to be cumulative to any act already passed, conferring privileges upon any company now existing under the laws of this State, or which may hereafter be organized.

ARTICLE III.

CAVALRY CORPS.

- SECTION.
- 1103. A squadron of cavalry defined.
 - 1104. How organized.
 - 1105. What constitutes a troop, etc.

- SECTION.
- 1106. Parade and drill.
 - 1107. Fines for non-attendance.

Squadron. § 1103. A squadron of cavalry shall consist of not less than two or more than five troops, and shall be commanded by a major, elected by the commissioned officers of the troops composing the squadron. He shall appoint his own staff, and determine his own uniform and that of his staff, with the approbation of the commander-in-chief.

Two or more troops may form a squadron. § 1104. Any two or more troops of cavalry, having regard to their neighborhood and facility of communication with each other, may unite to form a squadron, and whenever such formation is determined on they shall report the same to the commander-in-chief, who shall thereupon order an election for major, at such time as he may think proper, and shall issue a commission to the officer elected.

Arms. § 1105. Each troop of cavalry shall consist of forty men besides the captain, uniformed and mounted; they shall be armed with cavalry sabers or broad swords, and dragoon holsters, or

Article 4.—The Militia.

such other pistols as the commander-in-chief may direct, and may carry a carbine at their option.

§ 1106. The major commanding a squadron of cavalry shall parade and exercise the same, either in squadron or detachment, at least once in each year, for a period not exceeding three days at any one parade, after the arrival at the place of rendezvous. Orders for such parade may be given verbally at any parade, or by writing. Commissioned officers shall have twenty, non-commissioned officers and men ten days' notice.

Major to parade squadron or detachment annually.

§ 1107. Fines for non-attendance or delinquency at any squad drill, or parade, or muster, shall be imposed by a court martial, to be ordered by the officer commanding the squadron, but they shall not exceed double the amount imposed by the regulations of the troops of which the delinquent is a member, for offenses of like character, and shall be collected as provided in Section 1092.

Fines for non-attendance at squadron drills.

ARTICLE IV.

THE MILITIA.

SECTION.

- 1108. The militia of the State.
- 1109. How organized.
- 1110. Companies—how organized.
- 1111. Grade of militia officers.
- 1112. New divisions, etc.—how created.

SECTION.

- 1113. Regiments—how organized.
- 1114. Non-commissioned officers.
- 1115. Captains make return to adjutant.
- 1116. Notice of drills—how given.
- 1117. Register of commissioned officers.

§ 1108. The militia of the State consists of all persons not heretofore classified within its limits subject to military duty, and not exempted therefrom by the acts of Congress or the laws of this State, or belonging to some volunteer organization.

The militia.

§ 1109. The militia shall be organized into companies, battalions, regiments, brigades, and divisions, which shall be numbered throughout the State, by order of the commander-in-chief, in such manner that every corps of the same denomination shall bear a different number, by which number every company, district, regiment, brigade, or division, as the case may be, shall be designated in the commissions of the officers commanding the same.

Organization—how numbered and designated in commissions

§ 1110. If, from exemptions, there are not persons enough liable to do militia duty in any district or beat, a company may be organized of those so liable from adjoining districts or beats, of

Deficiency in numbers in any district company.

Article 4.—The Militia.

not less than forty nor more than one hundred, under the direction of the colonel of the regiment; and when so done, must be accurately reported.

Grades of
officers.

§ 1111. The following grades of militia officers shall be recognized: Commanding each division, a major-general; each brigade, a brigadier-general; each regiment, a colonel, lieutenant-colonel, and major; a separate battalion, a major; each company, a captain, first and second lieutenants, and ensign. Wherever other grades exist, they shall continue until the same becomes vacant, when they shall respectively cease and determine.

New divisions
and
brigades,
—regimental
and company
districts.

§ 1112. New divisions and brigades shall be created by the Legislature; regimental and company districts by order of the commander-in-chief, on the report of the officers commanding the companies in the regimental district, but in all cases, when practicable, the regimental district shall be coterminous with the County in which it is situated.

Two or more
regiments
may be in
same County

§ 1113. There may be two or more regiments in the same County, and two or more Counties may be united to form a regiment, due regard being had to the proportion thereof; but the existing arrangement in this behalf shall not be disturbed except by the Legislature, unless upon application of those interested therein.

Captain to
divide com-
pany into
squad.

§ 1114. The captain of each company shall divide his company into four squads, as nearly equal as may be, and appoint one fit and proper person in each as sergeant, and one as corporal, and he shall also appoint a first sergeant: they shall be responsible for the proper distribution of all orders, and may be removed by a company court martial for proper cause.

Returns to
be made by
captain to
adjutant.

§ 1115. Each captain of a militia company shall make out and deliver to the adjutant of the regiment to which he belongs a full return of the number and names of the men belonging to his company, on the first day of May in each year, for which he shall receive such compensation as is paid to the takers of the State's census, to be paid out of the military fund.

Summons
to drill, etc.
—by whom
given.

§ 1116. A non-commissioned officer, or any other person appointed for the duty, may warn persons subject to militia duty to appear at parades, musters, or drills, and he shall be furnished with a list of persons to be warned. Such warning may be given verbally to the party in person, or by leaving a written summons at his most notorious place of abode; but the party may claim

Article 5.—the Sns.

his exemption at the time of such warning and produce to the warning officer the evidence thereof, which may be his own oath or such other evidence as may establish the fact, and it shall be the duty of the warning officer to enter the exemption claimed against the name of the party on his list.

§ 1117. Each colonel of a militia regiment shall, by himself or his adjutant, keep a roster or list of all the commissioned officers of his regiment below the rank of captain, and shall revise and correct the same as often as may be necessary, and annually, on or before the first day of June, shall forward to the Secretary of State copies of the returns so delivered to the adjutant of his regiment, as well as a copy of the roster above mentioned, and for habitual failure in the premises, shall be liable to be tried by a general court martial and cashiered, or otherwise punished, as said court may direct.

Roster of
officers to be
kept by
colonel.

ARTICLE V.

ELECTIONS.

SECTION.

- 1118. Election of militia officers.
- 1119. Notice of—how given.
- 1120. Voters failing to attend.

SECTION.

- 1121. A plurality of votes will elect.
- 1122. Elections—by whom ordered.

§ 1118. All elections of militia officers shall be by the people; of captains and subaltern officers, by the people of the several company districts subject to do militia duty; of field officers, by the citizens of the Counties subject to military duty under the command of such officers; brigadier and major-generals, by the citizens of the respective brigades and divisions subject to military duty under such commander of the brigade or division, and may be superintended by a Justice of the Peace and a freeholder, or by two freeholders or two military officers, as the authority ordering the election may see fit to prescribe.

Militia offi-
cers to be
elected by
the people.

Election—
how held.

§ 1119. Notices of such elections may be given as follows: By publication in one or more gazettes, by notice at the usual place of posting legal notices, or by orders published at parade or drill. Twenty days' notice shall be given of the time and place of the election of any officer below the grade of brigadier-general.

Notices of
election—
how given.

§ 1120. In case of voters failing to attend at any election for militia officers, and no vote shall be polled, it shall be the duty

Art. 4. 5.—Elections.

New elec-
tion ordered
or officer ap-
pointed—
when.

of the superintendents to return the fact to the Executive Department, with a statement of the interval allowed for the reception of votes; whereupon the commander-in-chief may, in his discretion, order a new election or appoint an officer to fill the vacancy, and commission him accordingly.

Plurality
of votes to
elect.

§ 1121. At all elections of militia officers, the person having the highest number of votes shall be declared elected, and every officer to whom a commission shall issue shall declare to the Executive Department, within a reasonable time after its reception, his acceptance or declension of the same. After two months have elapsed, he shall be deemed to decline unless he shall have uniformed and equipped himself.

Elections
for officers
above rank
of captain.

§ 1122. All elections for militia officers of and above the rank of captain shall be ordered by the commander-in-chief, and below that rank by the captain, or those acting as such, and on failure to elect, such captain or the commanding officer of the company may complete the same by appointment, and such appointees shall be commissioned as in case of elections. All officers of the military force of this State shall be commissioned by the Governor, whether of the line, field, or staff. The commission of staff officers, except the chiefs of the staff department, will expire with the commissions of the officers on whose staff they may be appointed.

CHAPTER III.

ORGANIZATION OF THE STAFF OF THE MILITIA.

SECTION.

- 1123. Staff department of the militia.
- 1124. Of the Commander-in-Chief.
- 1125. Military duties of Secretary of State.
- 1126. Staff of division.
- 1127. Battalion entitled to a staff—when.
- 1128. Secretary of State.

SECTION.

- 1129. Paymaster-General—his duties.
- 1130. Expenses of Staff department.
- 1131. Accounts for military service.
- 1132. Chief of each staff—his duties.
- 1133. Secretary of State chief of staff.
- 1134. Governor shall appoint three aids.

§ 1123. The staff departments of the militia shall be as follows—

Staff depart-
ments of the
militia.

viz :

1. The Secretary of State's department.
2. The Quartermaster-General's department.
3. The Commissary-General's department.
4. The Paymaster-General's department.
5. The Judge-Advocate-General's department.
6. The Surgeon-General's department.

Chapter 3.—Organization of the Staff of the Militia.

§ 1124. The chiefs of the several staff departments shall be attached to the staff of the commander-in-chief. Chiefs of staff departments attached—how

§ 1125. [The office of the Adjutant and Inspector General is abolished, and the duties heretofore required of that officer shall hereafter be performed by the Secretary of State—to-wit: He] (a) Military duties of Secretary of State. He shall reside and keep his office at the seat of Government. He shall obey all orders given him by the commander-in-chief in relation to the duties of his office, and keep a fair record of all orders and communications which he shall receive from time to time. He shall require annual returns from the major and brigadier-generals, from which he shall make out a general return of the whole strength of the militia and forces of the State. He shall provide accurate abstracts of annual returns for divisions, brigades, regiments, and companies, both of the militia and volunteers, which forms, when made out, shall exhibit the strength of arms and accouterments, equipments, and munitions of such divisions, brigades, regiments, and companies, and a description of the corps composing the same; and shall transmit these abstracts for annual returns to all officers, who are required to fill them at such times as may be designated in general orders. All military orders and commissions shall pass through his office. He shall lay before the Governor every communication he may receive on military affairs requiring Executive action. He shall attend all public reviews when the commander-in-chief shall review any portion of the forces or the whole of them. He shall, whenever required by the commander-in-chief, inspect the arsenals and armories of the State, which shall be under his charge; and all applications for the distribution of arms shall be made to him. He shall also act as inspector-general of the State, and shall, whenever ordered by the commander-in-chief, inspect any portion of the military forces of the State.

§ 1126. The division staff shall be constituted as follows: A Division staff. division inspector, with the rank of lieutenant-colonel, two aids-de-camp, one quartermaster, one judge-advocate, and one surgeon, each with the rank of major, to be appointed by the major-general. The brigade staff shall consist of a brigade inspector, with the rank of major, one aid-de-camp or quartermaster, each with the rank of captain, to be appointed by the brigadier-general. Brigade staff. The regimental staff shall consist of an adjutant, a quartermaster, a paymaster, Regimental staff.

(a) Acts of 1865-6, p. 227.

Chapter 3.—Organization of the Staff of the Militia.

commissary, judge-advocate, and surgeon, each with the rank of lieutenant, to be appointed by the colonel of each regiment.

Staff of independent battalion.

§ 1127. In case of a separate battalion, the commanding officer of the battalion shall be entitled to, and shall appoint a like staff with the colonel of a regiment.

Arsenals, magazines, ordnance, etc., under control of Secretary of State.

§ 1128. The Secretary of State shall keep in order and control the arsenals and magazines of the State, attend to the due preservation of the ordnance, arms, accouterments, munitions of war, and implements of every description, the property of the State and in its possession, and he shall at all times have the control and disposition of the same for that purpose. He shall report annually to the commander-in-chief the actual situation, condition, and disposition of all the ordnance, arms, and military property which in any wise appertain to, or respect the department confided to his keeping.

Paymaster general to make annual reports.

§ 1129. The paymaster-general shall annually report to the commander-in-chief all such matters connected with his department as come to his knowledge, and all moneys received by him shall be deposited in the Treasury to the credit of the military fund, and shall constitute a part of the same.

Chiefs of staff departments to make quarterly returns

§ 1130. Each chief of a staff department shall keep a true account of the expenses of his department, which shall be reported quarterly to the commander-in-chief, who shall draw his warrant on the military fund for the same. An abstract of such warrants shall be laid before the Legislature.

Accounts for military services.

§ 1131. All fees for military service shall be embraced in an account made out and certified by the officer to whom the same may be due, and delivered to the officer of the pay department within the military organization where the same accrues, who shall immediately forward the same to the paymaster-general.

Jurisdiction of chiefs of staff.

§ 1132. The chief of each staff department shall, under the direction of the commander-in-chief, have command over all subordinate officers in his department, and shall, from time to time, issue orders and instructions for their government and practice, together with such printed blanks and forms as may be necessary to carry all orders into execution.

Blanks and forms to be provided.

Chiefs of the staff.

§ 1133. The Secretary of State shall be the chief of the staff organization. The quartermaster-general, commissary-general, and paymaster-general, shall each rank as lieutenant-colonels, and shall also be appointed by the Governor. The judge-advocate-

Chapter 4.—Courts Martial.

general and surgeon-general shall each rank as lieutenant-colonels, but shall not be entitled to any commands (except in their own departments) as such; they shall be appointed by the Governor.

§ 1134. The Governor shall appoint three aids-de-camp, by warrant, with the rank of colonel, but their warrant shall expire with the Governor's term of office. Aids to the Governor, or, etc.

CHAPTER IV.

COURTS MARTIAL.

SECTION.

- 1135. Courts martial—fines and penalties.
- 1136. Constitution and rules of.
- 1137. How convened.
- 1138. Failing to attend court or parade.
- 1139. Refusing to attend court.
- 1140. Officers detailed, etc.

SECTION.

- 1141. Pecuniary penalties, how collected.
- 1142. Non-commissioned officers, etc.
- 1143. Cadets of the Georgia M. Institute.
- 1144. *Fi. fas.* for fines—proceedings.
- 1145. Duty of collecting officers.
- 1146. Disposition of fines, etc., collected.

§ 1135. Military forfeitures, fines, and penalties, shall be adjudged by courts martial, in accordance with military law and the usage of the army of the United States. Notices to officers charged with offenses, to appear at a general court martial, shall be personally served at least twenty days before the time prescribed for holding court, and may be contained in the order appointing the court. Courts martial to adjudge fines, etc.

§ 1136. The constitution of all courts martial shall be in accordance with the regulations of the army of the United States, except where differently prescribed in this Code, and their mode of proceeding regulated, as far as practicable, by the same rules, but no court martial shall impose sentence of death on any offender in time of peace, or imprison an offender (except for contempt) in time of peace. Constitution and rules of courts martial.

§ 1137. General courts martial shall be convened on the order of the commander-in-chief; they shall have cognizance of all military offenses, and shall not sit with less than five nor more than thirteen members, except where supernumeraries are summoned, but the acting members of the court shall never exceed thirteen. Regimental courts martial may be ordered by a commander of a regiment or battalion, to consist of three or more commissioned officers of the regiment or battalion, at least, for trial of offenses committed within the battalion or regiment, and company courts General court—how convened. Regimental courts—how ordered and constituted.

Chapter 4.—Courts Martial.

martial may assemble by the order of any captain of a company for the trial and assessment of all fines for delinquencies at any parade or muster, to consist of the commissioned officers of the company.

§ 1138. Besides the penalties usually adjudged against military offenses, officers of the militia shall be subject to fine for non-attendance at parade, drill, or muster, and for other non-performance of duty, but no fine for absence at company parade, drill, or muster, shall exceed ten dollars, exclusive of the cost of collecting the same, except as herein provided.

Officers, besides military punishment, subject to fine.

§ 1139. If any officer charged with a military offense shall refuse to attend a court martial convened for the trial thereof, the case shall proceed as if he were present. Company courts martial may proceed and assess fines without the presence of the delinquents, provided they were duly warned to perform the duty concerning which they are delinquent.

Officers refusing to attend court martial.

§ 1140. Officers detailed on a general court martial shall be paid the sum of four dollars per day during the time of their actual session, and four dollars for every twenty miles in going and returning therefrom, to be paid by the Governor by warrant, on the necessary production of the certificate of the president of the court. For regimental and company courts martial the pay of each member shall be one dollar per day, to be paid out of the fines collected by the commander of the regiment, battalion, or company.

Pay and mileage of officers on general, regimental and company courts.

§ 1141. Courts martial shall have power to punish contempts in the same manner as civil courts.

Court may punish for contempt.

§ 1142. Pecuniary penalties assessed by any court martial shall be collected by execution issued under the hand of the president of the court, and directed to the Sheriff of the County in which the delinquent resides, and shall have the same force and effect as civil process of the same character, according to the laws of this State.

Fines collected by execution.

§ 1143. Non-commissioned officers shall be degraded to ranks only by sentence of a company court martial.

§ 1144. Cadets of the Georgia Military Institute must be tried according to the rules and regulations of said Institute.

Cadets--how tried.

§ 1145. All executions for the collection of any penalty adjudged by a court martial shall be returned to the officer issuing the same, with the money collected thereon, or a return of no

Execution to be returned in 60 days.

Chapter 5.—Preservation of Order at Parades.

property to be found on which to levy the same, within sixty days from the date of its issue; and the Sheriff, on failure to make a return, shall be liable to be ruled for the amount due on such execution, in the next Superior Court after such failure, in the same manner as in civil cases.

§ 1146. All officers of the militia receiving fines or pecuniary penalties, collected by execution, shall make a return thereof to the paymaster-general, or to such officer of his department as he may designate, at least once a year, or oftener if necessary. The paymaster-general shall lay an abstract of the same before the commander-in-chief annually.

Officers receiving moneys collected.

CHAPTER V.

PRESERVATION OF ORDER AT PARADES.

SECTION.

- 1147. Disturbing officer or soldier on duty
- 1148. By persons connected with military.
- 1149. Officer has power to arrest.

SECTION.

- 1150. Sutlers—duties and privileges.
- 1151. Intoxication on parade ground.

§ 1147. No bystander, or person not connected with the military, shall molest, interrupt or insult any officer or soldier, while on duty, at any muster or parade, and the commanding officer, where such offense may happen, shall have power to confine such person under guard until the close of such parade or muster, who is liable to indictment and conviction for a misdemeanor, to be punished in the discretion of the court.

Interfering with officer or soldier on duty.

§ 1148. Any person connected with the military service of the State who shall be guilty of the offenses mentioned in the preceding Section, or shall otherwise violate military order or decorum, shall be arrested and punished at the discretion of a court martial.

Insubordination in the military.

§ 1149. The commander of companies, battalions or regiments, brigades or divisions, when on duty with their respective commands or parts thereof, shall have power, in their discretion, to arrest and confine, not exceeding the period for which they were on duty, any person who shall upon or near any parade ground, field, public highway, or any other place occupied by any portion of the military force of Georgia, under arms, by means of ludicrous disguise, dress, arms, and instruments, noise, or other means, disturb the peaceable and orderly proceedings of those under arms, and

Commanders may confine persons disturbing a parade.

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Offenders such disturbance may be viewed as a misdemeanor, and the offender may be indicted for a misdemeanor—may be indicted, and on conviction punished by fine and imprisonment, at the discretion of the civil court before which he is convicted.

Sutlers under the control of commanding officer. § 1150. When any sutlers shall attend any military muster or parade they shall be under the direction of the commanding officer with regard to the time and place of selling refreshments, and such commanding officer shall have power to grant exclusive privileges to such persons as may engage to furnish suitable, spacious, and convenient places of parade, and the sutler aforesaid, when permitted, shall not be liable for retailing spirituous liquors at any of the musters aforesaid under the law for retailing spirituous liquors without license.

Treatment of intoxicated visitors. § 1151. Visitors found on the parade ground during the times thereof intoxicated, may by the commander be marched beyond the lines, and on returning in the same state may be put under guard.

CHAPTER VI.

PROVISIONS OF LOCAL APPLICATION.

SECTION.

- 1152. Cities—organization of companies.
- 1153. Each beat elect a captain, etc.
- 1154. Removal of commissioned officer.
- 1155. Captain of beat, etc.
- 1156. Beat company—how designated.
- 1157. Regiments, battalions, etc.
- 1158. Volunteer companies of Augusta.
- 1159. Commanding officer—how elected.

SECTION.

- 1160. Members exempt from jury duty.
- 1161. Same privileges to other cities.
- 1162. Volunteer corps of Savannah.
- 1163. How organized.
- 1164. Rights of the regiment secured.
- 1165. By whom commanded.
- 1166. Honorary members—how admitted.

Cities divided into beats. Eight beat companies to form a regiment, four a battalion. § 1152. Cities where the population may authorize it may be divided into beat companies by law; each district in which two Justices of the Peace are elected shall constitute two beat companies. If there be eight beat companies or more they shall constitute a regiment; four or more shall constitute a battalion to be commanded by a lieutenant-colonel and major; two or more shall constitute a battalion to be commanded by a major.

Election of officers for beat companies, battalions and regiments. § 1153. The citizens of the several cities or towns arranged into beat companies, resident within their respective beats, shall elect one captain and two subaltern officers for each beat company; where a battalion exists the citizens resident within the battalion

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limits shall elect the lieutenant-colonel and major, or major, as the case may be, and where a regiment is formed the citizens within its limits shall elect a colonel, lieutenant-colonel, and major.

§ 1154. In cities or towns the removal of a commissioned officer shall not vacate his commission, unless it be beyond the corporate limits of the city or town. Where commissioned officer may reside.

§ 1155. The captains of all beat companies in the State shall appoint four sergeants and four corporals for their respective companies; they shall hold company courts martial in like manner with captains of company districts. Captains to appoint non-commissioned officers.

§ 1156. The beat companies in each regiment or battalion shall be designated by the first ten letters of the alphabet, commencing with "A" and continuing regularly to "K," omitting "J." Beat companies of regiments—how designated.

§ 1157. Battalions under separate command by the name of the city or town in which they are located, and regiments by a number fixed by the commander-in-chief. Battalions and regiments.

§ 1158. The volunteer companies of the city of Augusta are organized into a separate battalion called the "Independent Volunteer Battalion of Augusta," and separated from the tenth regiment. Any other companies which may be organized hereafter in the city of Augusta may, if they desire it, be attached to the battalion, and when the number of companies amount to eight, they shall constitute a regiment to be called the "Independent Volunteer Regiment of Augusta." Volunteer companies of city of Augusta to form independent battalion.

§ 1159. The battalion shall be commanded by a lieutenant-colonel, elected by the members of the companies composing the battalion, who shall have a full and complete regimental staff. No person shall be eligible as lieutenant-colonel or to an appointment on the staff who has not been connected as a regular member with one of the companies of the battalion for at least six months previous to the election or appointment. Commander of the battalion—how elected.

§ 1160. The active members of the battalion are exempted from jury duty in the Courts of the city of Augusta and in the County of Richmond, and from the performance of militia duty, except in case of war, riot, insurrection, or invasion. The battalion shall be subject to the orders of the commanding officer whenever he may deem it expedient. Battalion exempt from jury and militia duty.

§ 1161. The same privilege is granted to the volunteer companies in the city of Macon, and any other city in the State which has the requisite number of volunteer companies, and if City volunteer companies may form a battalion with

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like privileges.

deficient, they are allowed to make up such number from the County in which such city is situated, and if not in the County, elsewhere.

Volunteer corps of Savannah form a regiment.

§ 1162. The volunteer corps of the city of Savannah are formed into a regiment entitled the "First Volunteer Regiment of the State of Georgia," embracing as many corps as may choose to conform to the regimental organization; but when the regiment numbers sixteen companies, they may organize themselves into a brigade and elect the necessary officers to command the same in such manner as the members of said companies may see fit to adopt.

Officers and staff.

§ 1163. The first volunteer regiment shall be commanded by a colonel, lieutenant-colonel, and major, and shall be entitled to a regimental staff. Orders for the election of a colonel, as often as a vacancy occurs, shall be issued by the commander-in-chief, and the members of the several corps constituting the regiment alone shall be entitled to vote; all other elections for officers belonging to said regiment shall be ordered by the colonel or commanding officer.

Rights of the regiment secured.

§ 1164. The rights and privileges accruing to said regiment shall not fail by the consolidation of two or more companies, or the withdrawal or dissolution of one or more companies, but the same shall vest in and be enjoyed by the corps composing the "First Volunteer Regiment."

Commanded by its own officers and commander-in-chief.

§ 1165. The "First Volunteer Regiment" shall be subject exclusively to the command of its own officers and the commander-in-chief, except when on detached service either of this State or of the United States, when it shall be governed by the military law and the usage and custom of the army.

Honorary members of volunteer corps.

§ 1166. All the volunteer corps shall each have the privilege of enrolling, as honorary members of their respective corps, not exceeding twenty persons, who shall be exempt from ordinary militia duty only so long as they continue their membership in said companies, on paying into their respective treasuries the sum of twenty dollars each annually.

CHAPTER VII.

MISCELLANEOUS PROVISIONS.

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1167. Insurrection, etc.—duty of Gov'nor.
 1168. Discipline of military.
 1169. Entitled to pay and rations—when.
 1170. Duty of resident commander.
 1171. Requisition of militia by U. States.
 1172. Commanding officer, etc.
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 1175. Under arms to preserve order, etc.

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1176. Arms, etc., exempt from sale.
 1177. Number of votes required to elect.
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 1180. The ratification by the State.
 1181. Officers must report themselves.
 1182. Substitutes may be received.
 1183. General provisions adopting, etc.
 1184. Incorporated companies not affected

§ 1167. Upon any insurrection, rebellion, invasion, or probable prospect thereof, it shall be the duty of the Governor to call from that portion of the State then threatened, or other portion if necessary, such part of the military force of the State as he may think proper, and detail such number of staff officers of the necessary grades from the several staff departments for their accommodation, equipment, and support, as may be necessary.

In case of insurrection, invasion, etc., Gov. to call out military force.

§ 1168. Whenever any portion of the military force of this State shall be called into actual service, either of the State or of the United States, they shall be governed by the regulations of the army of the United States and the rules and articles of war, so far as the same are applicable; but to the cashiering of any officer, or the infliction of capital punishment within the limits of this State, the approbation of the commander-in-chief shall be necessary.

Discipline when called into actual service.

§ 1169. When any portion of the military force of the State is ordered by the commander-in-chief for actual service, or for drill and instruction, they shall be allowed such pay and rations and other compensation as are allowed to the army of the United States.

Pay and rations.

§ 1170. If a sudden invasion should be made, or insurrection happen, in any County or city of this State, the commanding officer in said County or city is empowered to take the necessary steps to repel the same, and, upon the requisition of the civil authority, to proceed to quell the insurrection, reporting the condition of things at once to the commander-in-chief.

Duty of resident commanders in case of sudden invasion

§ 1171. Whenever any detachment of the militia may be required of this State, by the proper authority, on the part of the United States, the commander-in-chief shall cause the same to be apportioned by such staff officers as he may think proper to detail for that purpose, and a list of the persons so detached shall be

Detachment of militia called for by U. S.

Chapter 7.—Miscellaneous Provisions.

made out and forwarded to the Executive Department forthwith, and the Governor shall assign the necessary officers to said detachment from the officers of the militia then in commission.

Brigade
or division
of militia
called into
service of
U. S.

§ 1172. When a division, or brigade, or companies sufficient to constitute either, shall be called for on the part of the United States and detached from the militia of this State, the Governor shall appoint a suitable officer to command the same, and commission him accordingly, unless otherwise provided for by the Constitution and laws of the United States.

Regiment or
battalion of
militia called
out of the
State.

§ 1173. Whenever a sufficient number of the militia to constitute a regiment or battalion shall be detailed for service to operate beyond the limits of the State, such regiment shall be furnished by the Governor with two flags—one the regimental color, bearing the arms of the State, the other the national color, bearing the arms of the United States—both inscribed with the name of the regiment, and if a battalion, the regimental color only, conforming to flags of like description in the army of the United States, and at the close of the service it shall be the duty of the officer commanding such regiment or battalion to return the same to the Governor, or report the reasons for his default therein, which shall be communicated to the next General Assembly.

Officers and
militia to
pass free over
toll bridges—
when.

§ 1174. All officers, whilst on duty, and any militia called to musters, parades, or drills, or to courts martial, or courts of inquiry, having to pass over toll bridges, ferries, or through turnpike gates, shall pass toll free going to or returning from the discharge of such duty.

On muster
days the mi-
litia are un-
der arms
from sunrise
to sunset.

§ 1175. For the purpose of preserving order on any day of parade, drill, or muster, the militia shall be considered as under arms from the rising of the sun to its setting in the same day, and shall be exempted from arrest during that time.

Arms, ac-
cousterments
etc., exempt
from sale.

§ 1176. All arms, ammunition, and equipments, the trooper's horse and furniture, the uniform and accouterments of the soldier, and every horse necessary to the discharge of military duty in every department of the State's service, with his apparel, shall be exempt from seizure and sale under civil process; nor shall any service of civil process be effectual upon any militia man while going to, continuing at, or returning from parade, drill, or muster, or while in actual service of the State or of the United States.

Plurality of
votes to elect

§ 1177. At all elections for officers of the militia, the person having the highest number of votes shall be declared elected.

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§ 1178. All elections for militia officers shall be held at the usual place of holding elections, and the superintendents shall return the result thereof to the commander-in-chief, who shall cause commissions to issue accordingly; but upon due proof of fraud or illegality in holding such election, the commander-in-chief may supersede the same and order a new one in his discretion.

Elections—
where held.

§ 1179. All commissions shall bear the impression of the Great Seal of the State in print, and shall run during good behavior; but they may be vacated by removal from the command in which the officer belongs by death, resignation, sentence of a court martial, and acceptance of another inconsistent commission. Staff officers, except the chiefs of the staff departments, may be removed by the officer in whose staff they serve, and their commissions shall expire with his commission.

Commissions sealed
with Great Seal.

Staff officers
may be removed.

§ 1180. The resolution of the Senate concurring in the nomination of any military officer shall be certified by the President and Clerk of the Senate, and be transmitted to the Executive Department, and the Governor shall cause commissions to issue in accordance therewith.

Nomination
of a military
officer to be
certified.

§ 1181. All officers, on reception of their commission and their subscription, and the attestation of the oath thereto annexed, shall immediately report themselves to the proper officer in command.

Officers to
report themselves.

§ 1182. Any person detached to serve with any portion of the militia called into the service of the United States may offer a substitute at or before the time of rendezvous, and such substitute, if he shall be an able-bodied man of the age of twenty-one years and upwards, and shall consent in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would be subject were he personally to serve, he shall be accepted by the commanding officer of the detachment, and ordered to be enrolled in place of his principal.

May provide
a substitute
when called
into service
of U. S.

§ 1183. All matters of detail in the various branches of the military service of the State, not specially provided for in this Code, which may occur in the execution and distribution of orders, reports and returns, proceedings of courts martial and courts of inquiry, discipline and etiquette, rank and precedence of officers, military badges and distinctions, shall be determined, as far as practicable, by military law and usage and the custom of the army of the United States.

General provisions
adopting military
law.

Chapter 8.—The Public Arms and Arsenals.

§ 1184. The provisions of this Code shall not repeal or supersede any rights, privileges, or liabilities, attaching to any military organization by any act of the Legislature creating such organization a corporate body; but in all cases where volunteer companies have been incorporated, they shall be called on by general order, published by the commander-in-chief, to report by the first day of May next ensuing the date when this Code shall go into effect; and on failure to report, they shall be deemed to have surrendered their franchise as corporations, and shall be dropped from the roll and disbanded; nor shall they supersede any militia laws now of force that may not be inconsistent with them.

CHAPTER VIII.

THE PUBLIC ARMS AND ARSENALS.

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- 1185. The public arms—where kept.
- 1186. Persons receiving must give bond.
- 1187. Delivery of arms.
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- 1189. Brigade inspector—his duty.
- 1190. Commissary-general—his duty.

SECTION.

- 1191. City volunteers may use arsenal.
- 1192. Deposit of gunpowder.
- 1193. Military storekeeper, etc.
- 1194. Must give bond and surety.
- 1195. His duties.
- 1196. Penalty for violation of duty.

§ 1185. The public arms of the State are to be deposited in the arsenals at Savannah and Milledgeville, as the public exigency may require, and at such other place as the commander-in-chief may order, or the General Assembly prescribe.

§ 1186. Before arms and accouterments are delivered to any volunteer corps, bonds and sureties must be executed for their careful preservation and faithful return according to law, payable to the commander-in-chief, in such sum and under such other regulations as he may prescribe.

§ 1187. When such is done, the Secretary of State shall draw his order on the keeper, who shall, without delay, deliver them.

§ 1188. In case the public necessity requires it, the commander-in-chief may permit the delivery or distribution of arms without taking such bond, and may impose such terms as he may see proper.

§ 1189. The brigade inspectors must examine into and report the condition of the public arms and accouterments in their respective brigades to the Secretary of State by the first Monday in October annually.

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§ 1190. When the Secretary of State is satisfied that any portion of such are being injured for want of proper care, he may prescribe such terms for their preservation as he may see fit, and may, in his discretion, have them returned to the arsenals.

Neglect of arms.

§ 1191. The volunteer corps of any city of this State where there is an arsenal are permitted to deposit their arms there, provided such does not interfere with the proper keeping of the arms therein and that all expense of so doing is defrayed by such corps.

City volunteers may use arsenals

§ 1192. Gunpowder shall not be deposited in any arsenal contrary to any ordinance or by-law of the city where it is situated.

Deposits of gunpowder.

§ 1193. The Governor has power to appoint military storekeepers for such arsenals or other places where the public arms may be kept, who hold their offices for one year.

Military storekeepers

§ 1194. Before entering on the discharge of their duties, all military storekeepers shall give bond and surety in such sum as the Governor may order, and shall also swear faithfully to discharge the duties of their offices to the best of their skill and knowledge.

Shall give bond and surety.

§ 1195. It is their duty—

1. To take into possession and safely and nicely keep all the State arms, accouterments, munitions, or other State property committed to their care; to deposit them in the State Arsenal if in good repair, or in such other building as they may be directed, and to keep such arsenal or building in proper order.

The duties of military storekeepers

2. To make annually, or oftener if required by the Governor or Secretary of State, a report to the said latter named officer of the number, kind, and order of the arms and accouterments; of the condition of the munitions and other property in their keeping, including the condition of their buildings.

3. To deliver to any officer or person having the order of the Secretary of State the arms or other property required, if in their possession.

4. To obey all lawful orders, and to perform such other duty as the law may require.

§ 1196. If such keeper shall violate any portion of his duty, for each violation he forfeits twenty-five dollars of his salary, and for unfaithful conduct or inefficiency may be removed by the Governor.

Penalty for violation of duty.

TITLE XII.
E D U C A T I O N .

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THE UNIVERSITY OF GEORGIA.

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- 1215. Permanent income, etc.
- 1216. Former acts not repealed by Code.

University
of Georgia
and its gov-
ernment.

§ 1197. The government of the University of Georgia, at Athens, is vested in a Board of Trustees, who are subject to the General Assembly.

Name and
style—may
sue and be
sued.

§ 1198. For such purpose they are a body corporate and politic, by the name of the “Trustees of the University of Georgia,” by which they shall have a perpetual succession, have and use a common seal, and be a person in law, able to plead and be impleaded, to hold and acquire real and personal estate, with power to lease and otherwise manage the same for the good of the University. All money or property granted by the State, or individuals, for the advancement of learning in general, is vested in such Trustees.

Number of
Trustees.

§ 1199. Such Trustees shall consist of — citizens of this State, any — of whom shall make a quorum, with power to transact all business within their authority.

When the
Board is re-
duced below
a quorum.

§ 1200. If the Board shall be reduced to less than a quorum, the Governor shall fill the vacancies until the quorum is complete, and then the quorum shall fill the remaining vacancies.

Powers
specified.

§ 1201. They have power—
1. To elect their own officers, such as President, Vice-President, Secretary, Treasurer, or such of them as they may require, and also all other officers they may deem necessary for their organization.

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2. To elect a presiding officer of said University, who shall be styled "the Chancellor of the University of Georgia," and in case of a vacancy in his office, unsupplied, to create such office and make such arrangement for the conduct of the institution as to them shall seem meet.

Presiding officer.

3. To elect or appoint professors, tutors, stewards, or any other officer necessary, to discontinue or remove them as the good of the University may require, and fix their salaries.

May elect professors.

4. To prescribe the course of studies to be pursued by the students, the terms and manner of graduating, and of conferring all the degrees.

Course of studies.

5. To establish all such schools of learning or art as may be useful to the State, and organize the same in the way most likely to attain the ends desired.

Establish schools.

6. To call on all persons who may have, or have had, any funds, property, papers, or books belonging to the University, to deliver them up and make settlements.

Books, funds, etc.

7. To adjust and determine the expenses of the institution.

Expenses.

8. To exercise any power usually granted to such incorporations necessary to its usefulness, and not in conflict with the Constitution and laws.

Powers usually granted.

§ 1202. The President of the Board and two of its members may appoint a meeting at any time, by giving to the others at least ten days' notice, by letter or otherwise. When the President does not act the senior Trustee present shall preside, and in all other respects discharge his duties; when the Board is divided the presiding officer shall give the casting vote, or may vote to make a tie. A majority of the body present shall govern if a quorum. Nothing done at a special meeting shall be binding after the rising of the next annual meeting, unless then confirmed.

Meetings of Board—how called.

§ 1203. If any member of the Board, being within the State, shall fail to attend any two successive annual meetings his seat becomes thereby vacant, unless he is specially excused by the Board for good cause shown.

Trustees failing to attend.

§ 1204. Such Trustees shall never dispose of the stock by them subscribed for, except with the consent of the General Assembly, but the dividends therefrom shall be drawn and used as the various demands of the University may require.

Shall not dispose of stock subscribed for.

§ 1205. It is the duty of such Trustees to make an annual report of their business to the Governor, which must embrace a state-

Trustees must report annually.

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ment of their expenditures and receipts on account of the University, the number and names of the students, their different studies, the tuition money, and all information and suggestions which the Board may think conducive to the good of the University, and the cause of general education in the State.

§ 1206. The Governor shall appoint annually ten citizens of this State as a special Board of Visitors to attend the University examinations preceding the annual commencements, and said committee, by three of their number chosen by them, shall report to the Governor with the least possible delay, the character of said examination. Such Visitors shall receive for their services five dollars *per diem*, estimating from the date of their leaving their respective homes.

§ 1207. The Governor shall lay the reports respectively, of the Board of Trustees and the Board of Visitors, annually, before the General Assembly, in connection with his annual message, with such comments as he may see proper, and when so done the General Assembly has power to revise and approve or reject the action of the Board of Trustees.

§ 1208. All officers elected or appointed for the University shall be of the Christian religion, but no person of any religious denomination shall be excluded from equal advantages of education and the immunities of the University on account of their speculative sentiments in religion, or being of a different religious profession from the trustees or faculty.*

§ 1209. The Chancellor of the University, its professors and tutors, shall not be required to take certain oaths prescribed in its charter.

§ 1210. The Chancellor has the authority to appear before the General Assembly once at each session and address them in person on the condition, interests, and wants of the University.

§ 1211. The University may confer degrees as follows:

1. To each graduate of the University the degree of Bachelor of Arts.

2. To each graduate of the University, or of another college of three years' standing, or to such graduates as have passed a year in the University schools, all being of good moral character, the degree of Master of Arts.

* See 5th Clause, 1st Article Constitution of Georgia.

Chapter 1.—The University of Georgia.

3. To all law students who have attended the lectures of the professors, and are recommended by them for the same, the degree of Bachelor of Laws.

4. To the graduates of such medical school as may be established by the trustees of the University, the degree of Doctor of Medicine.

5. To students in the University schools of two years' standing, and proficient in two or more of them, the degree of Doctor of Philosophy.

6. To persons distinguished for learning, ability, and character, according to their respective vocations, the degree of Doctor of Laws, or of Divinity, and, where appropriate, both. It may also confer such other degrees and honors as may tend to the promotions of the arts and sciences.

§ 1212. Any law student having a diploma of graduation, signed by the proper authority of the University, is entitled to plead and practice law in all the Courts of Law and Equity of this State on the same terms of the graduates of the Lumpkin Law School; and all graduates of the Medical School of the University are entitled to practice their profession in all its branches.

Law students may practice.

§ 1213. By the authority of the Board of Trustees there shall be established, in connection with the University, an institute combining the instruction usually given in academies and to the lower classes in colleges, and by the same authority there may be a reduction of the number of years usually spent in colleges prior to graduation. University schools for professional education, including the application of science to the industrial arts as well as to the more abstruse and recondite sciences, and especially for the promotion of medical and legal education, not omitting the application of chemistry to agriculture, and mathematics to civil engineering.

Preparatory school in connection with college.

§ 1214. There is reserved and set apart for the University campus, not subject to alienation, thirty-seven acres of the tract of land donated to the University by the late Governor John Milledge.

Campus grounds not subject to alienation.

§ 1215. The permanent income of said University from its bank stock shall not be less than eight thousand dollars annually, and when the dividends from the bank shall not be equal to said sum, the Governor is required to make up the deficiency semi-annually by his warrant on the State Treasurer for its payment out of any money not otherwise appropriated.

The permanent income not less than \$8,000.

§ 1216. The various acts of the General Assembly relative to

Chapter 2.—Georgia Military Institute.

Acts in relation to University, not repealed by this Code, still in force. said University, in force at the time of the adoption of this Code, if not embraced herein, and not inconsistent with what is so embraced, are still of force.

CHAPTER II.

GEORGIA MILITARY INSTITUTE.

SECTION.

- 1217. Superintendent—appointment, etc.
- 1218. His rank in the volunteer force.
- 1219. Absence—how supplied.
- 1220. Military storekeeper at Institute.
- 1221. May be allowed extra pay—when.
- 1222. In the distribution of arms, etc.
- 1223. Inspectors—appointment and duty.
- 1224. Visitors—appointment, etc.
- 1225. Persons disqualified to act.
- 1226. State cadets—how appointed.
- 1227. How selected—vacancies, etc.
- 1228. Transferred to pay list—when.

SECTION.

- 1229. Shall teach two years—when.
- 1230. Quorum of Inspectors may act.
- 1231. Reasonable expenses allowed.
- 1232. Shall appoint Sec'y and Treasurer.
- 1233. Treasurer must report.
- 1234. Inspectors report to the Governor.
- 1235. Officers, etc.—ineligibility of.
- 1236. Rules, etc.
- 1237. Suits for or against the Institute.
- 1238. Expenses of State cadets.
- 1239. Salary of the Superintendent.
- 1240. Officers resigning without notice.

§ 1217. The commanding officer of said Institute is styled the Superintendent; he is chosen by the Board of Inspectors, and holds his office at their will and pleasure. He may appoint all his subordinate military officers, subject to the approval of said Board.

§ 1218. By virtue of his office, he is entitled to rank in the volunteer force of the State as major, and to command the volunteer battalion of which his cadets form a part, and shall be commissioned by the Governor accordingly.

§ 1219. In the absence of the Superintendent from parade, or other times, his junior officers of the Institute take his place according to rank.

§ 1220. The Superintendent is, by virtue of his office, also military storekeeper of the public arms and accouterments at the Institute, with power to appoint a subordinate, for whose conduct he shall be responsible. His powers and duties are the same as other military storekeepers, but he receives no salary except for the safe keeping of a quantity of arms largely more than necessary for the institution.

§ 1221. Should the Governor place a large quantity of the public arms in his keeping, he may allow him just compensation, not to exceed the salary of other military storekeepers.

§ 1222. In the distribution of the public arms, or any portion of them, the Military Institute must be first supplied according to its necessities.

In distribution of arms, Institute first supplied.

§ 1223. The affairs of the Institute shall be under the control of a Board of ten Inspectors, to be appointed by the Governor, of which the Governor shall be *ex officio* President; the Board may elect a President *pro tem.* to officiate in the Governor's absence. Three of the Inspectors shall be a quorum. It is the duty of said Board to organize such departments for staff duty as may be necessary to establish the rank and grade of all officers of the Institute; to appoint the State cadets; to fill vacancies in the academic staff, and to make and ordain all regulations for the government of the Institute; to cause to be kept a strict account of all moneys received and paid out on account of said Institute, and report the same to his Excellency the Governor at the end of each session, together with the proper vouchers for the same; all of which, together with the report of the Superintendent, shall be by him laid before the General Assembly at the regular session thereof in each and every year.

Board of Inspectors — their appointment and duty.

§ 1224. A Board of Visitors to the Institute shall be annually appointed by the Governor, as many as he may deem conducive to the interest of the Institute, not exceeding seven, who shall meet annually at the institution on such day and for such purpose as may be designated in the regulations. They shall report to the Governor such matters as they may deem advisable touching said institution.

Board of Visitors, appointment, etc.

§ 1225. No cadet who has been dismissed or expelled, or has deserted from the Institute, shall be a member of any Board connected therewith, nor any other cadet, until after the expiration of three years from the date of his leaving the institution, except as an instructor.

Persons disqualified as members of either Board.

§ 1226. The Board of Inspectors shall appoint, by warrant, one cadet from each of the Congressional Districts of the State, and two from the State at large. They shall not be under fourteen or over twenty-five years of age, and must be of insufficient pecuniary means to maintain and educate themselves at the institution.

State cadets — how appointed.

§ 1227. They shall be taken in turn, from each County in the District, until every County has furnished one, before any County shall send another; vacancies shall be supplied from a different County than that from which the regular appointment came. If

How selected; vacancies — how filled.

Chapter 2.—Georgia Military Institute.

any of the Districts shall fail to offer one applicant, or from reasonable objections there shall be no appointment from a District, the board, after giving due notice of such deficiency, shall fill the vacancy from applicants already before them. The Board of Education in each County may select and recommend one applicant from their several Counties.

§ 1228. If it should be ascertained, or should happen, that a State cadet, after his appointment, has sufficient pecuniary ability to defray his expenses, he shall be transferred to the list of pay cadets, and the vacancy shall be filled by another appointment.

§ 1229. Every State cadet shall sign a written pledge of honor to act in the capacity of teacher in one of the schools of this State, after leaving the Institute, for a term of two years, unless excused for sufficient cause by the Board of Inspectors, receiving such compensation therefor as may be agreed on between himself and the authority of the school.

§ 1230. A quorum of said Board of Inspectors are competent to the transaction of all business, except making or changing the rules and regulations, when a majority must be present. Their meetings shall be held at the Institute as often as may be necessary. Vacancies in the Board of Inspectors must be reported to the Governor, who shall fill the same.

§ 1231. All reasonable expenses incurred by the members of both of said Boards, in the discharge of their duties, shall be allowed them by the Governor, and paid by his warrant on the Treasury, out of any money not otherwise appropriated, but there shall be no salary, or *per diem* compensation.

§ 1232. The Board of Inspectors shall appoint a Secretary and Treasurer of said Institute and fix his compensation. He must give a bond and security in the sum of five thousand dollars, to be approved by said board, a copy of which shall be sent to the Governor and filed in the Executive Office.

§ 1233. Such officer shall quarterly render to the Superintendent, and oftener if he requires it, a full statement of his receipts and disbursements, which shall be reported to the Board of Inspectors annually, or oftener if required by them.

§ 1234. Said Board shall annually, and up to the first day in October, make to the Governor a written report of all the affairs of the institution, sending therewith the annual report of the Superintendent, and shall propose such alterations or improvements

State cadets may be transferred to the list of pay cadets—when.

Must teach two years after graduating, if not excused.

A quorum of said board may act; meetings—when held; vacancies—how filled.

Expenses—how paid.

Secretary and Treasurer—appointment, etc.

Treasurer must report quarterly.

Inspectors must report to Governor.

Chapter 2.—Georgia Military Institute.

as they may desire, which, together with the report of the Board of Visitors, shall be by the Governor laid before the General Assembly, in connection with his annual message.

§ 1235. An officer or professor of the Institute is ineligible as one of the Board of Inspectors or Visitors; neither can either one of said Board be chosen to either one of said positions. Ineligibility of officers.

§ 1236. The rules and regulations of the Board are subject to the call of the General Assembly. Rules, etc., of the Board.

§ 1237. Suits for or against the Institute must be in the name of the Board of Inspectors; service on the Superintendent shall be sufficient. Suits for or against the Institute.

§ 1238. The sum of two thousand dollars is annually appropriated to said Institute, to be used by the Board of Inspectors, in consideration of which ten State cadets must be furnished board, tuition, washing, fuel, light, and medical treatment, free of charge, they providing their own room, furniture, clothing, etc., which sum is payable quarterly on the warrant of the Governor for that purpose. Expenses of State cadets—how paid.

§ 1239. The salary of the Superintendent shall be paid by the State out of any money in the Treasury not otherwise appropriated, at the close of each session, by the warrant of the Governor drawn on the Treasurer for that purpose. Salary of Superintendent—how paid.

§ 1240. No professor, assistant professor, or the Superintendent of said Institute shall resign his office therein without giving the Board of Inspectors thirty days' notice of his intention so to do; and for a violation of the provisions of this Section, such officer so violating shall forfeit to said Institute one-fourth of his annual salary, to be retained on settlement.

CHAPTER III.

ACADEMY FOR THE BLIND.

SECTION.

- 1241. Location and organization.
- 1242. A body corporate.
- 1243. Power and duty of Trustees.
- 1244. Pupils—who entitled, etc.
- 1245. How appointed.
- 1246. Number—how regulated.
- 1247. Pay pupils—how received.
- 1248. Treasurer must give bond.

SECTION.

- 1249. Trustees must report to Governor.
- 1250. Visitors—appointment and duty.
- 1251. Powers of—must report.
- 1252. Vacancies—how filled.
- 1253. Statistics—how obtained.
- 1254. List of indigent—by whom kept.
- 1255. Former acts continued in force.

Chapter 3.—Academy for the Blind.

Location,
etc., of Acad-
emy for
Blind.

§ 1241. An institution for the education of the blind is located at Macon under the control of seven Trustees already appointed.

Trustees a
body corpo-
rate.

§ 1242. They are a body corporate, and have all the powers and duties appertaining to similar institutions of this State in their corporate capacity as Trustees of the Academy for the Blind.

§ 1243. The Trustees have the power—

Powers of
Trustees.

1. To appoint such officers, teachers, and matrons as may be necessary—to prescribe their duties, fix their salaries, and to remove or discontinue them at pleasure.

2. To prescribe the course of studies, establish the rates of tuition, and adjust the expenditures of the institution.

3. To adopt such rules and regulations, not in conflict with law, as the interest of the Academy may require.

What pupils
educated,
and how se-
lected.

§ 1244. All indigent blind persons, residents of this State, between the ages of seven and twenty-five years, shall be selected by the Trustees from the different Counties of this State, received into the Academy, and supported and educated gratuitously to the extent the funds will permit.

Applicants
—how ap-
portioned.

§ 1245. When there are more applicants than can be accommodated they shall be apportioned among the several Counties, according to representative population.

Number of
pupils regu-
lated by
funds on
hand.

§ 1246. Unless the funds will otherwise permit, there shall hereafter be but one indigent pupil from the Counties applying, and in case there are not means enough to receive one from every County applying, those shall be received first who first make application. A beneficiary shall not remain at the charge of the institution longer than four years.

Pay pupils
—how re-
ceived.

§ 1247. All others than the indigent are to be received upon such terms as the Trustees may impose.

Treasurer
must give
bond.

§ 1248. The Treasurer of the Board shall give bond and security in the sum of three thousand dollars.

Trustees
must report
to Governor.

§ 1249. The Trustees must make annual reports to the Governor, as is required of the Board of Inspectors of the Military Institute, so far as applicable to the affairs of the Academy for the Blind, and the Governor must make a like disposition of them.

Board of
Visitors.

§ 1250. The Governor shall appoint a Board of ten Visitors for said Academy, who shall meet the Board of Trustees at the Academy annually, at such time as the latter may designate.

Powers and
duty of Vis-
itors.

§ 1251. The powers and duties of said Visitors are the same as those appointed for the Military Institute, and the same disposition is to be made of their report.

Chapter 3.—Academy for the Blind.

§ 1252. The Trustees fill vacancies in their own body as do the Trustees of the Georgia University. When a vacancy occurs and is filled, it must be reported to the Governor. Their ineligibility is likewise the same as of those last mentioned.

Vacancy in Board of Trustees—how supplied.

§ 1253. The Tax Receiver of each County must keep a column for, and receive the numbers of the blind between the ages of seven and twenty-five, a statement of which shall be obtained annually by said Board of Trustees, from the Comptroller General's office. Before the digest is sent by the Tax Receiver to the Comptroller, the Ordinary of each County shall examine with such Receiver his list of the blind, and correct, by memoranda thereto attached, any mistake.

Statistics of blind—how obtained.

§ 1254. The Ordinary shall also take down the names of such as are indigent, and procure their admission into the Asylum, if possible, and if from any cause they are not received, he shall report to the Board of Trustees the names, ages, and sex of such, who shall keep a record of all such reports.

List of indigent blind.

§ 1255. Section 1216 (as to laws kept in force,) applies to the Asylum for the Blind.

CHAPTER IV.

ACADEMY FOR THE DEAF AND DUMB.

SECTION.

- 1256. Located at Cave Spring.
- 1257. Trustees—how appointed, etc.
- 1258. The Principal—how appointed.
- 1259. Other officers—how appointed, etc.
- 1260. Exclusive power, etc., of Principal.

SECTION.

- 1261. Visitors may be appointed.
- 1262. Contracts—how made.
- 1263. Vacancy—how filled.
- 1264. Chap. 3 of this Title applies—when.

§ 1256. The Academy for the Education of the Deaf and Dumb is located at Cave Spring, and is under the management of three Trustees.

Academy for Deaf and Dumb.

§ 1257. The Trustees need not reside in the County where the institution is located, but the Principal shall be required to reside in the institution.

Residence of officers.

§ 1258. The Principal of said institution is elected by said Board of Trustees. He is responsible to them, and his acts subject to their veto.

Principal—how elected, and to whom responsible.

Chapter 4.—Academy for the Blind.

Subordinate officers, regulations, etc. § 1259. Said Principal has authority to nominate all his subordinate officers and employees, subject to the approval of the Board. He shall make all regulations of internal police; shall authorize all purchases of ordinary supplies, and examine and certify to the correctness of bills of such supplies before paid by the Treasurer.

Exclusive powers and duties of Principal. § 1260. He shall be the sole medium of communication between the Board and the subordinate officers and employees of the institution, and shall have the exclusive direction and control of the system of religious and intellectual instruction.

Board of Visitors. § 1261. The Governor may, in his discretion, appoint a Board of Visitors, to consist of such a number as he thinks best, and when appointed, their rights and duties are the same as those of the Visitors of the Academy of the Blind.

Contracts—how made valid. § 1262. No contract of said Board of Trustees shall be valid unless it is first recorded by the Secretary in a book kept for that purpose, signed by the President and countersigned by said Secretary.

Vacancy in Board of Trustees—how filled. § 1263. When a vacancy occurs in said Board, the Secretary or any member shall notify the Governor within twenty days, and the vacancy must be filled within thirty days from said notice.

Provisions of previous Chapter applicable. § 1264. All the provisions of the preceding Chapter not in conflict with the preceding Sections of this Chapter apply to the Academy for the Deaf and Dumb, to its Board of Trustees and Visitors, its officers, and other officers of the State or County upon whom any duty is enjoined—the words deaf and dumb being substituted whenever the words “the blind” occur.

CHAPTER V.

COUNTY ACADEMIES.

SECTION.
1265. Trustees of County Academy.
1266. Vacancies—how filled.

SECTION.
1267. Authority of Trustees.
1268. Liability of holder of funds.

Trustees of County Academies—how appointed. § 1265. When it is not otherwise provided for, the Justices of the Inferior Court of the several Counties have the power to appoint Trustees for any County Academy, whether incorporated or not, and to any number they may deem expedient.

Chapter 5.—County Academies.

§ 1266. When vacancies occur, and provision is not made as to <sup>Vacancies—
how filled.</sup> the manner in which said vacancies are to be filled, such Justices have power to fill the same in their respective Counties.

§ 1267. The authority of said Trustees, unless specially re- <sup>Authority of
Trustees.</sup> stricted, is to elect their teachers, fix their salaries and terms of office, prescribe the course of studies, manage the finances, adopt all such rules and regulations for the government of their respective institutions, as they may think prudent, if not in conflict with the laws.

§ 1268. Any person holding Academy funds and failing to pay <sup>Liability
of holders
of Academy
funds.</sup> over when bound, is liable to twenty per cent. interest from time of demand, and to be proceeded against by the Justices of the Inferior Court as against holders of County funds.

CHAPTER VI.

COMMON SCHOOLS AND EDUCATION OF THE POOR.

ARTICLE 1.—*Educational Fund of the State—how made up.*

ARTICLE 2.—*Educational Fund—how paid out by the State.*

ARTICLE 3.—*Educational Fund of the Counties—how made up.*

ARTICLE 4.—*Educational Fund of Counties—by whom managed.*

ARTICLE 5.—*The Beneficiaries of the Educational Fund.*

ARTICLE I.

THE EDUCATIONAL FUND OF THE STATE—HOW MADE UP.

SECTION.

1269. From dividends on bank stock.
1270. Proceeds of W. & A. R. R.
1271. Balances in the Treasury.

SECTION.

1272. From donations.
1273. Such donations—how managed.
1274. Earnings of W. & A. R. R., etc.

§ 1269. The Educational Fund of the State is made up—

1. Of the dividends upon the capital stock of the State in the Bank of the State of Georgia, the Bank of Augusta, and the Georgia Railroad and Banking Company. <sup>Educational
Fund from
dividends on
stock.</sup>

§ 1270. From the net earnings of the Western and Atlantic Railroad, to be managed and disposed of as follows: <sup>From the
net earnings
of W. & A.
Railroad.</sup>

Article 1.—The Educational Fund of the State—how made up.

1. One hundred thousand dollars of said net earnings stand annually appropriated for such purpose, and all to remain with the State Treasurer until the Governor draws his warrant for the same, or any part thereof.

2. In addition to said sum of money the whole of the net earnings of said road is set apart as an Educational Fund, to take effect in the following manner :

As any portion of the present public debt is paid under the existing law from said earnings, the Treasurer shall issue scrip or education bonds certifying the amount, and that it is entitled to draw interest thereon from the Treasury at the rate of six per cent. per annum.

3. For any balance of said one hundred thousand dollars, that may not be drawn from the Treasury at the close of each educational year, the Treasurer shall issue a like certificate for said amount.

4. Said script shall be in favor of the Secretary of State, as Trustee of the Educational Fund, which, together with the script for bank stock, shall remain on deposit in the Treasury to the credit of the Educational Fund. The Treasurer shall issue to said Secretary, from time to time, certificates of said deposits.

5. Any amount of money that may at the time this Code goes into effect be loaned out, or on deposit under the Act of December 11th, 1858, shall be returned to the Treasury, and appropriated to taking up that amount of the public debt under the provisions of this Section.

6. The Educational Fund thus raised shall be subject to appropriation by the General Assembly to any educational purpose in this State.

§ 1271. From any balance that may be in the State Treasury at the time of distributing the Educational Fund, over and above the expenses, ordinary and extraordinary, of the State Government for the then political year. If said balance is not drawn out, scrip for it is to be issued and used as set forth in preceding paragraph.

§ 1272. From any money donated by will, deed, or otherwise, for such purpose.

§ 1273. In the case named in the preceding Section, it is the duty of the Governor—

Donations
for Educa-
tion — how
managed.

1. Upon a tender of the sum so given or bequeathed in cash, to

Article 2.—The Educational Fund—how paid out by the State.

have the same deposited in the State Treasury, and the State shall thereby become pledged for the payment of said sum according to the terms of the donation, and if thereby the interest alone is to be used, said interest shall be paid at the rate of six per cent. per annum.

2. To issue scrip or educational bonds therefor, to the person named as Trustee, and if none is named, then to the State's Trustee of the Educational Fund.

3. The interest to be payable in the same manner, and the fund to be managed as said Educational Fund, unless a different mode is prescribed by the donor; then according to said mode, if possible to be done. In no case, under the above provision, shall the State be liable to refund the principal thus paid into the Treasury.

§ 1274. The appropriations of the net earnings of the State Road and of the balances in the Treasury, may be discontinued by the State, in whole or in part, by act of the General Assembly. Earnings of W. & A. R. R. may be diverted.

ARTICLE II.

THE EDUCATIONAL FUND—HOW PAID OUT BY THE STATE.

SECTION.

- 1275. A list of children, etc.
- 1276. Funds—how appropriated.
- 1277. Warrant for School Fund.

SECTION.

- 1278. County failing to make returns.
- 1279. Penalty for false return.

§ 1275. The Ordinary of each County shall annually, by the third Monday in November, report to the Governor, under his hand and, seal the whole number of children in his County, as ascertained from the Tax Receiver's digest, his own knowledge, and the knowledge of the Grand Jury, as hereinafter set forth. List of children — how organized.

§ 1276. As soon as that is done, the Governor shall, on that day, make an estimate of the amount of the Educational Fund in the Treasury, and of the number of children in each County, and make a *pro rata* division of the same among the different Counties, according to the number reported from each. Funds—how apportioned.

§ 1277. For the amount each County is entitled to he shall draw his warrant on the Treasury in favor of the several Ordinaries for their respective amounts. The Treasurer shall pay the same to each Ordinary, or his order, taking a receipt for the same. If the Ordinary is not Treasurer of the Board of Education, the war- Warrant for School Fund.

Article 3.—The Educational Fund of the Counties—how made up.

rant must be in favor of said Treasurer, and the Ordinary, in his report, must certify who is such Treasurer.

Fund lost by failure to make return § 1278. If any County neglects to present a proper return to the Governor by the time prescribed it loses its share in the fund.

Penalty for excessive return. § 1279. If any Ordinary certifies to the Governor a greater number of children than he is authorized to, he is guilty of malpractice in office, and may be indicted; and, if found guilty, may be fined and imprisoned in the discretion of the Court.

ARTICLE III.

THE EDUCATIONAL FUND OF THE COUNTIES—HOW MADE UP.

SECTION.

- 1280. School Fund of the County.
- * 1281. Tax for education—how levied.
- 1282. When Grand Jury fail, etc.

SECTION.

- 1283. Wants of County to be regarded.
- 1284. School Fund—to whom paid.

School Fund of Counties—how made up. § 1280. The Educational Fund of the respective Counties of this State is made up of—

1. The share of the State Fund which may be distributed to each.
2. The amount raised by taxation for such purpose.
3. The money arising from the sale of any escheated property.
4. The money arising from fines and forfeitures over and above the charges upon it, and from the result of *qui-tam* actions, where the whole or one-half goes to the State or County, and is, by special enactment, directed to be paid to the Educational Fund.

Tax for education—how levied. § 1281. The Justices of the Inferior Court of the several Counties have authority, upon the recommendation of the Grand Jury, to levy a tax upon the State tax, for educational purposes, of such per cent. as said Jury may recommend.

Tax—how levied when Grand Jury fails to recommend. § 1282. If the Grand Jury, at the time they must recommend the general County tax, fail to take any action in reference to such tax, or if different Grand Juries of the same term differently recommend, said Justices may, in their discretion, levy a tax for such purpose, not to exceed twenty-five per cent. upon the State tax. If such Grand Juries recommend a different per cent. said Justices may levy the medium between the two extremes.

Wants of County re- § 1283. When the levy of said tax is entirely in the discretion of said Justices, they shall consult the other members of the

Article 4.—The Educational Fund of Counties—by whom managed.

Board of Education, to ascertain the wants of the County before doing so. garded in le-
-to whom
-paid.
-tax.

§ 1284. All moneys from all said sources are to be paid, when collected by the proper officers, to the Ordinary, if Treasurer of the School Fund of the County—if not, to said Treasurer. School Fund
-to whom
-paid.

ARTICLE IV.

THE EDUCATIONAL FUND OF COUNTIES—BY WHOM MANAGED.

SECTION.

- 1285. For each County, etc.
- 1286. Board of Education—their duty.
- 1287. Price of tuition.
- 1288. Course of study prescribed.
- 1289. Teachers must be examined.
- 1290. How paid.
- 1291. Previous accounts may be paid.
- 1292. Teachers' accounts—how made out.

SECTION.

- 1293. Com. schools may be established.
- 1294. Board failing to devise a plan.
- 1295. Ordinary must give bond as Treas.
- 1296. Additional bond may be required.
- 1297. Treasurer failing to pay, etc.
- 1298. Secretary of Board—who shall be.
- 1299. Ordinary must report to Governor.

§ 1285. The Educational Fund of each County is under the management of a Board of Education, which Board is to consist of the Justices of the Inferior Court, the Ordinary, and some other qualified citizen, to be selected by the Judge of the Superior Court presiding in said County. The person so selected holds the position for the term of four years, unless a vacancy occurs from any cause. The appointment and the filling of any vacancy by the said Judge shall be entered on the minutes of the Superior Court. The person appointed to fill a vacancy shall hold for a full term.

Board of
Education—
how organ-
-ized.

§ 1286. It is the duty of said Board—

1. To disburse the school fund for their respective Counties in the manner that in their judgment will best promote the cause of general education under the law.

Duty of
Board of
Education.

2. To act by themselves, or a committee, as a Board of Examiners, and examine all teachers who participate in the school funds upon the elementary branches, and also upon English grammar and geography, if the teacher applying shall desire, and to give said teachers the proper certificates of their qualification.

3. To publish annually the school system they may adopt, including the rates of tuition, in the public gazette where their respective Sheriffs publish their sales, together with their receipts from different sources and the items of expenditure.

Article 4.—The Educational Fund of Counties—by whom managed.

4. To meet once a month at the Court House, on the day the Court of Ordinary is held, and as often as may be necessary when called by either member of the Board.

Price of tuition. §1287. [The Board of Education are authorized to allow the teachers of children entitled to the benefit of the poor school fund, the same *per diem* pay for teaching said children as is charged by the same teachers for other children pursuing similar branches of study; *provided*, said charge shall not exceed sixteen cents per day.] (a)

What branches beneficiary may study. §1288. By the term elementary branches is meant spelling, reading, writing, and arithmetic; but children entitled to the benefit of the school fund may study English grammar and geography, or any other study, provided the tuition does not then, nor in any other contingency, exceed the rates of sixteen cents per day. Under said permission, such children who may be well educated in said branches mentioned, may, by special permission of the Board, study exclusively, at the same rates of tuition, higher branches of utility with any teacher competent to instruct them.

Certificate to teachers. §1289. A teacher claiming pay out of the school fund shall not be entitled thereto for any teaching done prior to his examination before the Board of Education. When a majority of the Board know of the competency of a teacher, they may give him the certificate without examination. Teachers shall be examined or receive the certificate whenever they apply.

Teachers—how paid. §1290. Teachers must be paid quarterly by the Treasurer, when their accounts are passed by the Board, provided there are funds; if insufficient funds, then all of equal dignity are to be paid *pro rata*. If at the close of the year the school fund is not sufficient to pay all the teachers' accounts, duly passed, said accounts must be first paid out of the funds raised for the next year. The rates of tuition should be so fixed by the Board of Education as to give all the children the benefit of the fund annually who have the right of participation. Teachers who do not have their accounts passed on by the first of January, annually, are postponed in their payment until the next year unless there is a surplus fund. All teachers' accounts for the year, and passed in the year, are of equal dignity without regard to the time when the teaching was done.

Article 4.—The Educational Fund of Counties—by whom managed.

§ 1291. Whenever the state of the funds will warrant it, persons who have in good faith taught poor children, prior to twenty-first December, 1859, and have not been paid, shall have their accounts passed by the Board of Education, and shall rank as of the year when so passed, but in no other case shall a teacher be paid who has not the proper certificate. Two-thirds of the Board of Education may, however, order an account paid when the neglect to return is satisfactorily explained. The Legislature shall not interfere in such cases. Children who reside in one County and go to school in another are to be paid for out of the fund of the County of their residence; *provided*, the teacher claiming the pay has a certificate from the Board of Education of the County where he teaches.

Accounts for previous years may be paid—when.

Tuition to be paid by County in which child resides.

§ 1292. All teachers' accounts shall state the number of days each child was taught, the studies pursued, and the rate of tuition claimed, which shall be sworn to.

Teachers' accounts—how made out.

§ 1293. When the Educational Fund of a County and the state of the population will warrant it, the Board of Education of each County have authority to establish a common school, or schools, to name and limit the number of scholars, and fix the salary of teachers; *provided*, all the children of the County entitled to share the Educational Fund are provided for, or there are means reserved for that purpose.

Common schools may be established—when.

§ 1294. If the Board of Education fail to devise any plan of education, the laws of force prior to December 13th, 1859, are continued in force.

What laws govern in absence of plan.

§ 1295. If the Ordinary of any County shall fail to give the bond required of him as Treasurer of the Board of Education, said Board has power to select some other responsible person to act as such, who shall give the requisite bond and security.

Ordinary must give bond as school Treasurer.

§ 1296. The Board may require of the Treasurer of the School Fund an additional bond, on the terms required by the Justices of the Inferior Courts of other officers.

Additional bond may be required.

§ 1297. If Such Treasurer shall fail to pay out any School Fund, as required by law, on knowledge of such failure coming to the Board, they shall issue a rule *nisi* against him, requiring him to appear before them within ten days, to show cause for such failure, and upon failing to show good cause, the Board shall order the Clerk of the Inferior Court to issue execution against him and his sureties: said execution shall be directed to all and singular

Proceeding against the Treasurer for failure to pay

Article 5.—The Beneficiaries of the Educational Fund.

the Sheriffs of the State, and shall have the form and effect of a tax *fi. fa.* issued by the Justices of the Inferior Court, and said *fi. fa.* shall claim twenty per cent. per annum interest from time of default.

§ 1298. The Clerk of the Inferior Court shall be Secretary of the Board of Education in the absence of the Ordinary or his Clerk, or when either is interested.

§ 1299. The Ordinary shall furnish the Governor any information he may desire touching the plan of education in the County, and the number of children pursuing different studies, and shall annually, at the close of the educational year, report to the Governor what balance, if any, there is of the Educational Fund, and what amount was raised by the County from other sources than the State.

ARTICLE V.

THE BENEFICIARIES OF THE EDUCATIONAL FUND.

SECTION.

1300. Persons entitled to School Fund.

1301. How ascertained, and by whom.

SECTION.

1302. List may be corrected.

§ 1300. All children between the ages of six and eighteen years, within their respective Counties, are entitled to the benefits of said fund, under the system that may be adopted by the respective Boards of Education; but children of parents who are unable to educate them, children discarded by their parents, and indigent orphan children, must first be provided for.

§ 1301. Such last mentioned children shall be ascertained as follows:

Poor children — how ascertained.

1. The Receiver of Tax Returns of each County shall require of each tax payer, when giving his tax returns, to state, under oath, the number of his children and children under his care between the ages of six and eighteen years.

2. As soon as the digest is compiled, the Ordinary shall select from the whole number the names of those who, from the poverty of their parents or otherwise, have not the means of being educated, and shall add thereto such as are in the same condition within his knowledge who have not been returned.

3. The list returned by the Tax Receiver, together with the

Article 5.—The Beneficiaries of the Educational Fund.

Ordinary's selection therefrom, shall be reported to any panel of Grand Jurors at the first Court held thereafter, and said Grand Jury shall examine said list, and ratify the Ordinary's selection in whole, or correct it, according to their best judgment, and may also add to the lists such as they know have not been returned to them.

4. If the Grand Jury, at said term, fail to take definite action, the list of the Ordinary shall stand.

5. When the list is finally made up it shall be returned to the Board of Education, and be entered on the proper book by the Ordinary.

6. Any person may, from time to time, report to said Board the names of any poor children not already reported, which, by order thereof, shall be added to the list.

§ 1302. If the Board is satisfied by proof that any children are on the list who are not entitled to be there, they have power to have them erased at any time, and to inform any teacher or other person interested in their action; *provided*, the system of education they may have adopted renders it necessary. List may be corrected.

TITLE XIII.

ELECTIONS BY THE PEOPLE.

CHAPTER I.

QUALIFICATION OF VOTERS.

SECTION.

1303. Who may vote for legislators.

1304. Voters for other officers.

1305. When one may vote out of County.

SECTION.

1306. Oath of voter out of his County.

1307. Additional oath may be required.

1308. Transferred voters.

§ 1303. The qualification of voters for members of the General Assembly is contained in the following oath, which must be taken when the managers of an election require it: Qualification of voters for members of Legislature.

["I swear that I have attained to the age of twenty-one years; Voter's oath.
that I am a citizen of the United States, and have resided for the last two years in this State, and for the last six months in this

Chapter 1.—Qualification of Voters.

County, and have considered and claimed it as my home, and have paid all legal taxes which have been required of me and which I have had an opportunity of paying, agreeable to law, for the year preceding this election. So help me God.”] (a)

Such electors may vote for all other officers.

§ 1304. Persons qualified to vote for members of the General Assembly, and none others, are qualified to vote for any other officers, civil or military, unless said privilege be enlarged or restricted by the Constitution or some special enactment.

When electors may vote in any part of the State, Circuit or District.

§ 1305. Any qualified voter for members of the General Assembly may vote for any candidate, or upon any question which is submitted to all the voters of the State, in any County of the State, and for any candidate or question which is submitted to all the voters of any District or Circuit, in any County of the Circuit, or District, in which is embraced the County of the voter’s residence.

Oath of voters under last section.

1306. [A voter coming under the preceding Section shall take the following oath, when required by the managers of an election: “I swear that I have attained to the age of twenty-one years; that I am a citizen of the United States, and have resided for the last two years in this State, and for the last six months in this District or Circuit (as the case may be), and have considered and claimed it as my home, and have paid all legal taxes which have been required of me, and which I have had an opportunity of paying agreeable to law, for the year preceding this election. So help me God.”] (a)

Superintendents may require an additional oath denying having voted before.

§ 1307. The superintendents may, in their discretion, or if demanded by a qualified voter, compel a person offering to vote to also take this oath:

“I swear that I have not this day voted at any election held at any place in this State for any of the candidates, nor for any other person for any of the offices to be filled. So help me God.”

Voters transferred from one District, County or Circuit to another to vote in latter District, etc.

§ 1308. When any County, or portion of a County, is changed from one County, or one District, or one Circuit to another, the persons who would have been qualified to vote for members of the General Assembly in the County, District, or Circuit from which taken, at the time of any election, shall vote in the County, District, or Circuit, to which they are removed, and if required to swear, the oath may be so qualified as to contain this fact. This provision, when applicable, appertains also to military elections.

CHAPTER II.

ELECTION FOR MEMBERS OF THE GENERAL ASSEMBLY.

SECTION.

1309. Holders of elections for legislators.
 1310. Oath of superintendents.
 1311. Before whom taken.
 1312. Election precincts.
 1313. Time of holding elections.
 1314. When freeholders may superintend.
 1315. Elections—how conducted.

SECTION.

1316. Penalty against superintendents.
 1317. Grand Jury to examine lists.
 1318. Election blanks—how furnished.
 1319. Misconduct of managers.
 1320. Voters exempt from civil process.
 1321. Vacancies for Legislature.
 1322. Special elections—how conducted.

§ 1309. The persons qualified to hold such elections are Justices of the Inferior Court, Justices of the Peace and freeholders. There must be three superintendents, and one must either be a Justice of the Inferior Court, or a Justice of the Peace, except in a certain contingency hereinafter to be set forth.

Superintendents of elections for members of the Legislature.

1310. Before proceeding with the election, each superintendent must take and subscribe the following oath:

Superintendents to take oath.

“All and each of us do swear, that we will faithfully superintend this day’s election; that we are Justices of the Inferior Court, Justices of the Peace, or freeholders (as the case may be), of this County; that we will make a just and true return thereof, and not knowingly permit any one to vote unless we believe he is entitled to do so according to the laws of this State, nor knowingly prohibit any one from voting who is so entitled by law, and will not divulge for whom any vote was cast, unless called on under the law to do so. So help me God.” Said affidavit shall be signed by the superintendents in the capacity each acts in full, both as to name and station, and not by abbreviation.

§ 1311. Said oath shall be taken before some officer qualified to administer an oath, if present, and if none such are on the spot, and acting at the time required, then said Superintendents may swear each other, and the oath shall be of the same effect as if taken before a qualified officer.

Oath of superintendent—before whom taken.

§ 1312. Such election shall be held at the Court Houses of the respective Counties, and if no Court House, at some place within the limits of the County site, and at the several election precincts thereof (if any) established or to be established. Said precincts must not exceed one in each militia district. Such precincts are established, changed, or abolished by the Justices of the Inferior Court at a regular term of the Court—descriptions of which must be entered on their minutes at the time.

Places of holding election.

But one precinct in any militia district.

Precincts changed, etc.

Chapter 2.—Election for Members of the General Assembly.

§ 1313. The day of holding the same is the first Wednesday in October, 1861, and biennially thereafter, and the time of day for keeping open the elections is from seven o'clock A. M. to six o'clock P. M. at the Court House, and from eight o'clock A. M. to [three] (a) o'clock P. M. at the precincts.

Elections biennial—on what days—during what hours to be held.

§ 1314. If by ten o'clock A. M. on the day of the election, there is no proper officer present to hold the election, or there is one, and he refuses, three freeholders may superintend the election, and shall administer the oath required to each other, which shall be of the same effect as if taken by a qualified officer.

Three freeholders may superintend election.

Manner of conducting elections.

§ 1315. All superintendents shall have such elections conducted in the following manner :

Vote by ballot.

1. The vote shall be given by ballot.

List of voters and tally sheets to be kept.

2. There shall be kept by the superintendents, or by three clerks under their appointment, three lists of the names of voters, which shall be numbered in the order of their voting, and also three tally sheets.

Number of voter.

3. As each ballot is received the number of the voter on the list shall be marked on his ballot before being deposited in the box.

Voter challenged.

4. When any voter is challenged and sworn it shall be so written opposite his name on the list, and also on his ballot.

Votes not to be counted if candidate objects.

5. The superintendents may begin to count the votes at any time in their discretion, but they shall not do so until the polls are closed, if a candidate in person, or by written authority, objects.

Certificate of superintendents.

6. When the votes are all counted out, there must be a certificate, signed by all of the superintendents, stating the number of votes each person voted for received ; and each list of voters and tally sheet must have placed thereon the signature of the superintendents.

Certificates, etc. to be carried to the County site.

7. The superintendents of the precincts must send their certificates, and all other papers of the election, including the ballots, under the seal, to the County site for consolidation, in charge of one of their number, which must be delivered there by twelve o'clock M. of the next day. Such person is allowed two dollars, to be paid out of the County Treasury, for such service.

Who are to consolidate the vote—their duty.

8. The superintendents to consolidate the vote of the County, must consist of all those who officiated at the County site, or a majority of them—at least one from each precinct. They shall

Chapter 2.—Election for Members of the General Assembly.

make and subscribe two certificates, stating the whole number of votes each person received in the County: one of them, together with one list of voters and one tally sheet from each place of holding the election, shall be sealed up and without delay mailed to the Governor; the other, with like accompaniments, shall be directed to the Clerk of the Superior Court of the County, and by him deposited in his office. Each of said returns must contain copies of the original oaths taken by the superintendents at the Court House and precincts.

9. The ballots shall not be examined by the superintendents or the bystanders, but shall be carefully sealed in a strong envelope (the superintendents writing their names across the seal), and delivered to the Clerk of the Superior Court, by whom they shall be kept unopened and unaltered for sixty days, if the next Superior Court sits in that time, if not, until after said term; after which time, if there is not a contest begun about said election, the said ballots shall be destroyed without opening or examining the same, or permitting others to do so. And if the Clerk shall violate, or permit others to violate this Section, he and the person violating shall be subject to be indicted and fined not less than one hundred, nor more than five hundred dollars. Such Clerks shall deliver said list of voters to their respective Grand Juries on the first day of the next term of the Superior Court, and on failure to do so, are liable to a fine of not less than one hundred dollars on being indicted and convicted thereof.

Ballots not examined.

To be delivered to Clk.

How kept by him.

When destroyed.

Penalty of violation.

Clerk to deliver lists to Grand Jury —penalty for failing.

§ 1316. If said superintendents do not deliver said lists and accompaniments to said clerks within three days from the day of the election they are liable to indictment, and on conviction, shall be fined not less than fifty, nor more than five hundred dollars. Any superintendent of an election failing to discharge any duty required of him by law is liable to a like proceeding and penalty.

Penalty where superintendents fail.

Where superintendent fails in any duty.

§ 1317. The Grand Juries shall examine said lists, and if any voter is found thereon who was not entitled to vote they shall present said illegal voter. If any person is suspected of voting for members of the General Assembly who was not entitled, but was entitled to vote for some other candidate at the same election, the foreman of the Grand Jury may examine the ballot, and that one alone, and lay it before the Grand Jury and return it. If the superintendents fail to return, as required, the lists and the ballots, they must be presented.

Grand Jury to examine lists.

Foreman may examine ballot.

Presentment against superintendents.

Chapter 2.—Election for Members of the General Assembly.

§ 1318. The Governor shall furnish the several Clerks of the Inferior Court all blank forms necessary for said elections, which they shall furnish the Justices of the Peace of their Counties at least ten days before election day, and on failure to do so, shall be liable to a fine by their Courts not exceeding one hundred dollars.

Blanks to be furnished by Governor to Clerk.

Penalty for neglect by Clerk.

§ 1319. If the superintendents or officers of such election shall make a fraudulent return thereof, or they or either of them, while so officiating, shall influence, or attempt to influence or persuade any voter not to vote as he designed, or shall take any undue means to obtain a vote, they shall forfeit for the offense one hundred dollars, to be recovered by information, and if the person be a Justice, he forfeits his office on proceedings for removal.

Penalty and forfeiture in case superintendents make fraudulent returns or interfere with voter.

§ 1320. No civil officer shall execute any writ, or civil process upon the body of any person qualified to vote at such elections while going to, or returning from, or during his stay there, on the day, under the penalty of five hundred dollars, to be recovered by action. A reasonable and full time shall be allowed for the journey to and from the polls.

Voter free from arrest while going to, returning from, or during his stay at an election. Penalty on officer for arrest.

§ 1321. Elections to fill vacancies for members of the General Assembly take place under the authority of a writ of election, issued by the Governor to the Justices of the Inferior Court of the County where the vacancy occurs, who must order and publish a day for holding the same, by giving at least twenty days' notice.

Twenty days' notice of election to fill vacancy for members of Legislature.

§ 1322. All the provisions of this Chapter apply equally to elections to fill such vacancies and any other special election.

Elections to fill vacancies, etc.

CHAPTER III.

ELECTION FOR GOVERNOR, MEMBERS OF CONGRESS, ELECTORS FOR PRESIDENT AND VICE-PRESIDENT, JUDGES OF THE SUPERIOR COURTS, AND SOLICITORS GENERAL.

ARTICLE 1.—*Provisions applicable to all.*

ARTICLE 2.—*For Governor.*

ARTICLE 3.—*For Members of Congress.*

ARTICLE 4.—*Electors for President and Vice-President.*

ARTICLE 5.—*Judges of Superior Courts and Solicitors General*

Article 1.—Provisions applicable to all.

ARTICLE I.

PROVISIONS APPLICABLE TO ALL.

SECTION 1323. Such elections—how conducted.

§ 1323. The election for the officers heading this Chapter are governed by the same rule as elections for members of the General Assembly in the following particulars:

1. In the oaths to be taken by the voters.
2. In the class of persons to hold the elections and the oath to be taken by them.
3. In the places and the time of the day to hold them.
4. In the manner of conducting and returning them, including all special elections, and in the duty of the Clerks of the Superior Courts and the Grand Juries.
5. In the several penalties attached to the Superintendent or other persons.
6. In the furnishing of blanks by the Governor.
7. In all other respects where applicable, and there is not a contrary provision by law.

Particulars in which elections for Governor, members of Congress, and for Electors for President and Vice-President are governed by same rules as elections for members of the Legislature.

ARTICLE II.

FOR GOVERNOR.

SECTION.

1324. Governor's election, etc.

SECTION.

1325. Return of vote for Governor.

§ 1324. The Governor is elected biennially, at the same time when members of the General Assembly are regularly elected, and a vacancy in the office is to be filled as required by the Constitution and the regulations of this Code elsewhere in conformity thereto.

Governor to be elected biennially.

Vacancy—how filled.

§ 1325. At the election for Governor a third package must be made up containing a certificate of the Governor's vote alone, together with the other papers of the election, as in the case of members of the General Assembly, which shall be directed by mail to "the President of the Senate and Speaker of the House of Representatives."

Separate package with certificate of vote for Governor to be sent by mail, etc.

Article 3.—For Members of Congress.

ARTICLE III.

FOR MEMBERS OF CONGRESS.

SECTION.

1326. Congressmen—when elected.

1327. Elections for extra sessions.

1328. Qualification of voters.

SECTION.

1329. Proclamation of result.

1330. Election in case of a tie.

1331. Commissions—when applied for.

§ 1326. Members of the House of Representatives of the United States Congress are elected at the same time and places that the Elections for members of Congress. Governor and members of the General Assembly are regularly elected, by the voters of their respective Congressional Districts.

§ 1327. If an extra session of Congress should be called after the expiration of the Congressional term, and before the next regular time for holding such elections, the Governor must issue his proclamation ordering an election of such Representatives for such extra session. Governor must order an election—when.

§ 1328. Besides the qualifications required by the Constitution, a residence of one year next preceding the day of election in the district where the candidate offers is necessary to make him eligible to election. Candidate must reside one year in district to be eligible.

§ 1329. Within twenty days after the election the Governor shall count up the votes, and immediately thereafter issue his proclamation, declaring the person having the highest number of votes, and otherwise qualified, to be duly elected to represent this State in the House of Representatives of the United States, and for what period. Governor to count up votes, etc.

§ 1330. If two or more persons, equally qualified, should have the same number of votes, the Governor shall issue his proclamation, ordering a new election, in not less than thirty days. In case of a tie new election ordered.

§ 1331. If any person duly elected as aforesaid shall not, within thirty days after the Governor's proclamation, apply for his commission, the Governor shall order a new election, as prescribed in the preceding Section, and vacancies for any cause are filled in like manner. Members elect to apply for commission in thirty days.

Article 4.—Electors for President and Vice-President.

ARTICLE IV.

ELECTORS FOR PRESIDENT AND VICE-PRESIDENT.

SECTION.

1332. Presidential Electors—when chosen
 1333. When and where to cast vote.
 1334. Vacancies—how filled.
 1335. Majority failing to meet.

SECTION.

1336. Electoral college—how organized.
 1337. Messenger to be chosen.
 1338. Pay of Electors and Secretary.

§ 1332. On the first Monday in November, 1868, and every fourth year thereafter, until altered by act of Congress, there shall be an election for Electors of President and Vice-President of the United States.

Day of election for Electors of President and Vice-President.

§ 1333. On the twentieth day after said election shall have taken place, it is the duty of the Governor to consolidate the several returns and immediately notify those persons of their election who have received a vote amounting to a majority, and to require their attendance at the Capitol on the first Monday in December thereafter to cast the vote of the State on the Wednesday following at twelve o'clock M.

Governor to consolidate returns and notify the persons.

§ 1334. In the event all, or a majority of said Electors may not have received a majority, the Governor shall communicate the fact to the General Assembly, if in session, and if not, he shall issue his proclamation convening them in time to secure the vote of the State in the Electoral College. The General Assembly shall, by joint ballot, elect as many Electors as have not received said majority. If a majority of Electors have been chosen by the people, they may fill the remaining vacancies themselves by ballot, which election shall be communicated to the Governor. If, when the Electors elected by the people, or by the General Assembly, or some by each, convene at the Capitol, any of their number may not be present at the time specified for counting the vote, a majority of the elected may fill all vacancies, which shall be duly communicated to the Governor.

All or a majority of Electors failing to receive a majority of votes cast, etc.

Electoral College may fill vacancies, etc.

§ 1335. If a majority fail to attend by said Wednesday at noon, from providential cause, those who do attend may adjourn from day to day for ten days, and if a majority is not present at the expiration of that time, the Governor shall convene the General Assembly on ten days' notice, who shall fill the vacancies by election.

On failure of majority of electors to attend, etc.

§ 1336. The electors, when assembled to cast the vote, shall

Article 5.—Judges of the Superior Courts and Solicitors General.

Electoral College to choose a President, etc. choose a President of their body from their number, and a Secretary not of their number; said Secretary shall make a record of their proceedings in a book from the Executive Department kept for that purpose.

Electoral College to choose a Messenger. § 1337. Such Electors shall elect, by a majority vote, a messenger to convey the vote of Georgia, and shall, in regard to that and all other matters, proceed, according to the acts of Congress in such cases made and provided.

Pay and mileage of Electors, and of their Secretary. § 1338. The pay of Electors shall be eight dollars per day for every day required in remaining at the Capitol on their mission, and eight dollars for every twenty miles in going to and returning therefrom, said mileage to be computed as that of members of the General Assembly. The pay of the Secretary shall be one hundred dollars, all of which is to be paid either out of the contingent fund, or out of any money in the Treasury, not otherwise appropriated, in the discretion of the Governor.

ARTICLE V.

JUDGES OF THE SUPERIOR COURTS AND SOLICITORS GENERAL.

SECTION.

1339. Judges—when elected.
1340. Proclamation of result.
1341. Oath of Judges—how taken, etc.

SECTION.

1342. New election—when ordered.
1343. Solicitors General—when elected.
1344. Must give bond.

Time of election for Judges Superior Court. § 1339. The election for Judges of the Superior Court takes place on the first Wednesday in January next preceding the expiration of their commissions.

Governor and Secretary of State to count the votes, etc. § 1340. The Governor, together with the Secretary of State, shall, within twenty days after the election, count the votes, and shall, immediately thereafter, issue his proclamation declaring the person receiving [a majority of the votes cast] (a) for Judge in each Circuit to be elected, and also requiring said person elect to appear before him, or two or more Justices of the Inferior Court of the County of his residence to take and subscribe the oaths of office, unless otherwise specially permitted.

Duty of Clerk of the Inferior Court, etc. § 1341. When said oaths are taken before the Justices aforesaid, they shall be entered by the Clerk of the Inferior Court of such County on their minutes, and they shall transmit, under

(a) Constitution—Art. 4, Sec. 2, Par. 1.

Chapter 4.—For Justices of the Inferior Court, Ordinary, and County Officers.

their hands and seals, to the Governor copies of the same without delay, when the commissions shall be issued.

§ 1342. If the person elect shall fail to appear and take the oath within thirty days from the date of said proclamation, unless providentially prevented, the Governor shall declare said office vacant, proceed to fill the vacancy, and, by proclamation, order another election to take place within thirty days from the date of his proclamation for said purpose.

§ 1343. Solicitors General are elected on the first Wednesday in January next preceding the expiration of their commissions.

§ 1344. The Governor shall proclaim the election of Solicitors General in the same manner that he does that of Judges, with the difference that he shall require them to execute, before such Justices, to be approved by them, their official bonds, which shall be by said Clerk transmitted to the Governor, together with a certified copy of the oaths from his minutes.

CHAPTER IV.

FOR JUSTICES OF THE INFERIOR COURT, ORDINARY AND COUNTY OFFICERS.

SECTION.

- 1345. Election of County officers, etc.
- 1346. Ordinaries and J. I. C.'s, etc.
- 1347. Other officers—when elected.

SECTION.

- 1348. County Treasurer—when elected.
- 1349. Election of other County officers.
- 1350. Notice of election—how given.

§ 1345. Article I. of Chapter III., Section 1323, applies to the officers whose elections are provided for in this Chapter.

§ 1346. Justices of the Inferior Court and Ordinaries are elected on the first Wednesday in January next preceding the expiration of their commissions.

§ 1347. Clerks of the Superior and Inferior Courts, and Sheriffs, Tax Collectors, Tax Receivers, County Surveyors, and Coroners, are elected on the same day and month mentioned next preceding the expiration of their commissions.

§ 1348. County Treasurers, where elected by the voters, are elected at the same time, annually.

§ 1349. The election of any officer not mentioned, whose duties

Office de-
clared va-
cant, etc.

Election
for Solicitors
General.

Governor
to declare
who is elec-
ted.

Solicitors
to give bond

Elections
for Justices
of Inferior
Court, etc.

Time of
election, etc.

Time of
electing oth-
er County of-
ficers.

County trea-
surers, etc.

General pro-

Chapter 5.—For Justices of the Peace and Constables.

vision as to
time of elec-
tion, etc.

are entirely of a County nature, shall be elected at the same time, unless otherwise provided for.

Clerk of In-
ferior Court
to give no-
tice of elec-
tions.

§ 1350. When either of the officers mentioned are to be elected, the Justices of the Inferior Court shall cause their Clerk to give thirty days' notice of the officers to be elected, and the time of the election, which shall be advertised at the door of the Court House, and also in some gazette printed in the County, if any.

CHAPTER V.

FOR JUSTICES OF THE PEACE AND CONSTABLES.

SECTION.

- 1351. Election of Justices of the Peace.
- 1352. How superintended.
- 1353. Returns—how made.

SECTION.

- 1354. Election—how regulated.
- 1355. Election of Constables.
- 1356. Constable's election, etc.

Time of el-
ection of
Justices of
the Peace,
etc.

§ 1351. Justices of the Peace are elected on the first Saturday in January next preceding the expiration of their commissions by the voters of their respective districts, provided they have resided in the district as much as thirty days, immediately preceding the election, and are otherwise qualified. The election must be

Place of
election.

held at the place of holding Justice's Court for the district; if none, then at the election precinct; if no election precinct, then at some place in the district named by the Justices of the Inferior Court, of which ten days' written notice must be given in the district.

Who shall
superintend
elections.

§ 1352. Such elections shall be superintended by three freeholders of the district, who shall take the oath required in Chapter II., of this Title, Section 1310.

Returns—to
whom made.

§ 1353. Said superintendents shall transmit one return of said elections to the Governor and another to the Clerk of the Superior Court of the County, who shall keep the same on file. The

Ballots to be
sealed, etc.

ballots shall be likewise sealed up, and the number of the district marked thereon and delivered to such Clerk.

Elections—
how govern-
ed.

§ 1354. The laws governing the elections for members of the General Assembly govern in the elections of Justices of the Peace whenever they may be applied and are not inconsistent with those of this Chapter.

Chapter 6.—Contested Elections.

§ 1355. Constables are elected on the same day, month, and place that Justices of the Peace are, and by the same class of voters, once in two years.

Time of Constables' election; voters; term of office.

§ 1356. Their elections are to be conducted in the same manner as those of Justices of the Peace, with the exceptions that—

Justice of the Peace to preside at Constables' election if not a candidate.

1. A Justice of the Peace must be one of the persons presiding at a Constable's election, if there is one in commission to be had, and he is not a candidate at the same election.

2. The returns must be made to Clerk of the Inferior Court of the County.

Returns to be made to Clerk Inferior Court.

CHAPTER VI.

CONTESTED ELECTIONS.

SECTION.

1357. Elections—how contested.

1358. In case of Legislators.

1359. Ballots may be examined.

SECTION.

1360. Set off of illegal votes.

1361. Contents of Bailiffs' elections.

1362. What defeats election.

§ 1357. When the election of a person by the people to any office requiring a commission from the Governor is contested the proceedings are—

Proceedings in cases of contested elections.

1. The adverse party shall have five days' notice in writing of the intention to contest, and the grounds of the contest.

2. The notice shall state the time and place where the contestant intends to take testimony, and the names of the witnesses, if any.

3. The elect shall give like notice of the time and place where he intends to take testimony, and the names of witnesses, if any.

4. Either party may appear by himself, or attorney, or both, and cross-examine the witnesses.

5. At the time of taking testimony any judicial officer of the County where the testimony is taken may preside to preserve order, to swear witnesses, and to see that the testimony is fairly and impartially taken down, but all the testimony offered must be written down. Said officer has the power to subpoena witnesses and compel their attendance, if in the State, and to issue commissions to take testimony of persons out of the State, and to adjourn from day to day.

Chapter 6.—Contested Elections.

6. All the papers and proceedings, or copies of them, must be transmitted to the Governor, certified to by the presiding officer, or agreed to by the parties.

7. When the Governor has notice of an intention to contest, he shall not issue the commission until the contest is decided, or the time has elapsed for it to begin.

8. Both parties may appear by themselves and counsel, and be heard before the Governor, who shall have both notified of the day when he will hear the contest.

9. Testimony going to prove the illegality of a vote, and the want of qualification in a voter, must be taken within thirty days from the day of the election.

10. No proceedings can be begun to contest an election after the Governor has issued the commission.

§ 1358. The proceedings to contest the seat of a member of the General Assembly are the same, and may be transmitted to the Governor, who shall send the same, immediately after the organization, to the presiding officer of the House where the contest lies, or may be sent direct to such presiding officer.

Proceedings
when seat of
a member of
Legislature
is contested.

§ 1359. When an election is contested, on the ground of illegal votes, any of whom it is claimed on affidavit can probably be proven by resort to the ballots, specifying what ballots, it is the duty of the Clerk of the Superior Court to deliver the same, together with the list of voters, to the person who presides at the taking of testimony, who shall examine said suspected ballots, and none other, and have put down as part of the testimony their contents, and all other testimony attacking and defending their legality.

When sus-
pected bal-
lots may be
examined.

§ 1360. Illegal votes by the method aforesaid, and otherwise, may be proven by both parties, and if such are proven on both sides one shall stand against another, and he is elected who has the greatest number of legal votes. All are considered legal not proven to be illegal.

Illegal votes
set off each
other, and
highest
number of
legal votes
elects, etc.

§ 1361. In all elections for Constables, corporation officers, or other officers not provided for above, contests as to elections shall be heard before and decided by the Court or persons who by law issue the certificates of election. For each day an officer pre-

Who decides
contest in
Constables'
election.

sides in hearing such contest he shall receive two dollars, to be paid by the losing party, and for which such Justice may issue a *fi. fa.*

Compensa-
tion of pre-
siding offi-
cer.

Chapter 1.—For United States Senators.

§ 1362. No election shall be defeated for non-compliance with the requirements of the law, if held at the proper time and place by persons qualified to hold them, if it is not shown that by that non-compliance the result is different from what it would have been had there been a proper compliance.

Election not void by reason of formal defects.

TITLE XIV.

ELECTIONS BY THE GENERAL ASSEMBLY.

CHAPTER I.

FOR UNITED STATES SENATORS.

SECTION 1363. Election of Senators to Congress.

§ 1363. The elections for Senators in the United States Congress from this State, shall be held by the General Assembly during the sitting or session which immediately precedes the beginning of the term which they are to fill.

Senators in Congress — when elected.

CHAPTER II.

FOR OTHER OFFICERS.

SECTION.

1364. Judges of the Supreme Court, etc.

SECTION.

1365. All elections by Legislature—when.

§ 1364. The Judges of the Supreme Court, the Secretary of State, the Comptroller General, the State Treasurer, Printer, and Bank Directors, are elected by the same rule as to time.

Time of electing Judges Supreme Court, etc.

§ 1365. All officers created for the service of the State, the election of which is not given to the people, or some other tribunal, are elected by the General Assembly, in the same manner and time as the officers elected by them.

Legislature to elect all officers, etc.

TITLE XV.
POLICE AND SANITARY REGULATIONS.

CHAPTER I.
LUNATIC ASYLUM.

- ARTICLE 1.—*The Trustees.*
ARTICLE 2.—*The Superintendent.*
ARTICLE 3.—*Admission and Disposition of Patients.*

ARTICLE I.
THE TRUSTEES.

SECTION.	SECTION.
1366. Management of Asylum.	1369. Officers—how appointed.
1367. Trustees—how appointed.	1370. Bond of Treasurer.
1368. Authority of Trustees.	1371. Annual Report of Trustees.

§ 1366. The State Lunatic Asylum at Midway, near Milledgeville, is solely the property of the State, and is under the management of three Trustees.

§ 1367. Said Trustees are biennially appointed by the Governor, on the first Monday in December, and in such manner that one of the Trustees shall be continued in office for a second term, that there may be always one member of the Board who has experience in the affairs of the Asylum.

§ 1368. They have authority—

1. To prescribe all the rules and regulations for the management of the institution, not conflicting with the law.
2. To appoint all the officers, point out their duties, and fix their salaries.
3. To create such other offices, and select the incumbents, if in their judgment such is necessary to an efficient administration.

Article 1.—The Trustees.

4. To remove from office, when the incumbents fail to discharge well their duties, or are guilty of any immoral or unfaithful conduct, and cause to be prosecuted any officer, or other person, who shall assault any inmate of said institution, or use toward such any other or greater violence than the occasion may require.

5. To hold in trust for said Asylum any grant or devise of land, or bequest or donation of money, or other property for the general use of the institution, or the particular use defined.

6. To visit the institution monthly by at least one of the Board, semi-annually by a majority, and annually by all of them, at such time as they may agree upon.

7. To bring suit in their names for any claim the institution might have, whether arising upon contract or tort.

§ 1369. The officers of the Asylum, appointed by the Trustees, are a Superintendent, an Assistant Physician, a Treasurer, a Steward, Assistant Steward, and Matron, whose salaries are paid quarterly out of the annual appropriations. Other officers appointed by the Trustees.

§ 1370. The Treasurer must give bond and security in the sum of five thousand dollars. Bond of Treasurer.

§ 1371. At the close of each fiscal year, which terminates on the first day of October, the Trustees shall make to the Governor, to be by him laid before the General Assembly, in connection with his annual message, a full report of the condition of the Asylum, in all its departments, [embracing the amount of each kind of provisions, drugs, clothing, and bedding purchased; of whom purchased, price paid, and aggregate cost; number of persons received, died, and discharged; dates of reception, discharge, and death; male and female, pauper and pay patients, and partial pay, if any; and also whether payment was made in clothing, provisions, or currency.] (a) Annual report of Trustees.

ARTICLE II.

THE SUPERINTENDENT.

SECTION.

1372. Must be a physician.

SECTION.

1373. Duty of Superintendent.

§ 1372. The principal officer of said Asylum is the Superintendent, who shall be a skillful physician. Superintendent of Asylum.

(a) Acts of 1865-6, p. 24.

Article 2.—The Superintendent.

§ 1373. It is his duty—

Superinten-
dent's duties

1. To reside constantly on the premises, and devote his profes-
sional services exclusively to the use of the Asylum, for which
purpose he must be furnished with a suitable residence.

2. To take charge of and exercise control, subject to the Trus-
tees, over every department of the institution, and have control
over all resident officers, attendants, and servants employed therein.

3. To discharge all duties any way connected with the restora-
tion to health or sanity of the inmates.

4. To make an annual report to the Trustees, on the first day
of October, of all the affairs of the institution under his super-
vision, [and shall account for all his expenditures on vouchers, in
the same form as those which are made in accounting for disburse-
ments in the Commissary Department of the United States.] (a)

ARTICLE III.

THE ADMISSION, MANAGEMENT, AND DISCHARGE OF PATIENTS.

SECTION.

- 1374. Who may be inmates.
- 1375. Inmates—how classified.
- 1376. Apartments of Asylum.
- 1377. Georgians preferred.
- 1378. Georgia pay patients.
- 1379. Non-resident pay patients.
- 1380. Pay patients classified.
- 1381. Certification of pauper patients.
- 1382. Support of pauper patients.
- 1383. Paupers to pay—when.
- 1384. Clothing, etc., of discharged paupers

SECTION.

- 1385. Inmates may be tried.
- 1386. Trial—how demanded.
- 1387. Admission of inebriates.
- 1388. Inebriates—how kept.
- 1389. Insane negroes, etc.
- 1390. Insane convicts.
- 1391. Convicts—how supported.
- 1392. Cured convicts—how disposed of.
- 1393. Uncertified patients.
- 1394. Re-commitment of inmates.
- 1395. Insane criminals.

Who may be
inmates of
Asylum.

§ 1374. Persons who may become inmates of said Asylum are
either lunatics, idiots, epileptics, or demented inebriates.

Classifica-
tion of in-
mates.

§ 1375. The inmates are divided into the following classes:

- 1. Pay or pauper patients residents of this State.
- 2. Pay patients being non-residents.
- 3. Insane Penitentiary convicts.
- 4. Insane negroes, in certain cases.

Asylum to
be divided
into apart-
ments.

§ 1376. The Trustees of the Asylum shall see that proper and
distinct apartments are arranged for said patients, so that in no
case shall the negro and the white person be together, nor the
Penitentiary convicts with either, and males and females shall be
kept separately.

(a) Acts of 1865-6, p. 24.

Article 3.—The Admission, Management, and Discharge of Patients.

§ 1377. Citizens of our own State shall have preference to non-residents when, at the time of the application, all can not be accommodated, and if such a contingency should happen, it must be reported to the Governor without delay, who shall communicate the fact to the General Assembly.

Georgia inmates preferred.

§ 1378. A pay patient resident of this State shall not be admitted unless accompanied by authentic evidence of lunacy, according to law, or there is produced the certificate of three respectable practicing physicians, well acquainted with the condition of the patient, or one from such physicians, and two respectable citizens, stating the cause of the application.

Resident pay patients—how admitted.

§ 1379. A pay patient, not a resident of this State, shall not be admitted unless accompanied by an authentic record of a conviction of a malady, which by the law of this State, is a ground of admission, from a Court having jurisdiction, or shall produce a certificate like that required in this State, together with the certificate of the Judge having jurisdiction, who shall state officially, that the certificate of said physicians and other persons, are genuine and entitled to full credit. And shall then not be received until the payment of expenses is secured.

Non-resident pay patients—how admitted.

§ 1380. Pay patients may be divided into different classes, according to the accommodation desired and their means of paying.

Pay patients may be classified.

§ 1381. When a person has been convicted of a malady requiring him to be committed to said Asylum, it is the duty of the Court presiding at the trial to certify if said person be a pauper. He shall not be certified a pauper unless in whole or in part supported by the County, or the County is bound for his support under the law. If there are persons who by law are bound and able to support him, the names of such persons must be given. If the person has means enough to support himself in part, the amount of such means must be stated and must be paid toward his support.

Pauper patients, and how they are certified.

§ 1382. A certificate of pauperism entitles the person to be supported at the expense of the State. Those for whose support others are bound must be furnished with suitable support by the State, and the expense collected out of such other persons by the Trustees.

Pauper patients supported by the State.

§ 1383. If a patient committed as a pauper, or as of limited means, becomes entitled to an estate, said estate is bound for his support according to its value, and whoever holds it may be com-

Pauperism ceasing, patient must defray expenses.

Article 3.—The Admission, Management, and Discharge of Patients.

pelled to secure to the Asylum its proper charges, or to turn over to the Trustees the property to be held for such purpose.

§ 1384. A pauper patient shall not be discharged from the Asylum without proper clothing and a sum of money necessary to carry him to his residence or the County from whence he was sent.

Discharged
pauper pa-
tient must
be clad, etc.

§ 1385. If, before or after admission of a pay patient, resident or non-resident, by certificate, the person alleged to be a lunatic, or his friend or relative, may make a demand of the Superintendent for a trial of the question of lunacy by jury, which shall be had without delay, according to law, in the County of Baldwin.

Trial of lu-
nacy may be
demanded,
etc.

§ 1386. The like demand and trial may be had by all patients who have been convicted of lunacy, if the person demanding it, being relative or friend, will make an affidavit that he believes the alleged cause of commitment did not and does not exist, and that the conviction was obtained by fraud, collusion, or mistake. The same right exists when there is an affidavit that the cause of commitment has ceased to exist, and there is a refusal by the Superintendent to discharge after demand made.

How trial
of lunacy
may be de-
manded.

§ 1387. When, by a provision of this Code, elsewhere made, a person is declared to be an inebriate and incapable of managing his property, such person, by his own consent, if capable, and if incapable, by the consent of his nearest relative, or when a person is not so declared, but has the certificate of three physicians, and is himself willing, such person may be received into said Asylum, allowed the use of apartments devoted to him, or such as are suitable, and be treated as a patient thereof.

Inebriates
may be ad-
mitted.

§ 1388. Such patients shall never be placed in company with any other class of patients without their consent, nor placed in confinement unless they are dangerous to themselves or others. [They must pay for their support as pay patients, and be subject to the control of the Superintendent as other pay patients until discharged.] (a)

Inebriates
—how kept.

§ 1389. Apartments must be provided for insane negroes, residents of this State, who are able or unable to support and take care of themselves. Those negroes who are able must pay for their support; those unable must be supported as other pauper patients. The certificate of the Justices of the Inferior Court

Insane ne-
groes, etc.

Article 3.—The Admission, Management, and Discharge of Patients.

of the County where the negro resides of his condition, mentally and pecuniarily, shall be sufficient to grant him admittance.

§ 1390. If a Penitentiary convict becomes afflicted so as the affliction would entitle another person to a place in said Asylum, he shall be received therein if accompanied by the certificate of the Physician to the Penitentiary and the Principal Keeper thereof of said fact. The certificate shall also show the name of the convict, the offense for which sentenced, the County from whence sentenced, and his term of service, which shall be filed away.

Insane convicts — how admitted.

§ 1391. If said convict has the necessary means, he shall pay for his support as long as he remains at the Asylum.

How supported.

§ 1392. If such convict shall recover before his term of service has expired, the fact shall at once be certified by the Superintendent to the Principal Keeper of the Penitentiary, who shall forthwith have said convict taken back into the Penitentiary.

Cured convicts — how disposed of.

§ 1393. Whenever there shall be an application for admission unattended by the requisite evidences, the Superintendent has authority to receive and provide for the person for a reasonable time, provided a sufficient sum shall be advanced for his maintenance in the meantime.

Temporary disposition of uncertified patients.

§ 1394. When a person has been properly received as a patient, but is absent for as long as three months, either from discharge, elopement, or removal by friends, he can not be received at the Asylum without going through the process required in this Chapter, according to the class of patients of which he may be.

Inmate absent for 3 months must be re-committed in form.

§ 1395. When a person has been acquitted of a capital crime on the ground of insanity, and such person is committed to the Asylum, he shall not be discharged thence except by special act of the Legislature. If the crime is not capital, he shall be discharged by warrant or order from the Governor. If sentence is suspended on the ground of insanity, upon restoration to sanity the Superintendent shall certify the fact to the presiding Judge of the Court where he was convicted.

Criminals acquitted on plea of insanity, or whose sentence is suspended, etc. — how dealt with.

CHAPTER II.

HEALTH, HOSPITALS, INFECTION, AND QUARANTINE.

SECTION.

- 1396. Who may establish hospitals.
- 1397. Regulation of quarantine.
- 1398. Quarantine grounds.
- 1399. Removal of vessels thither.
- 1400. Escaping quarantine.
- 1401. Bills of health, etc.
- 1402. Inland travelers.
- 1403. Duty of pilots.
- 1404. Persons on board of vessels.
- 1405. Proclamation as to contagions.

SECTION.

- 1406. Violation of quarantine.
- 1407. Concealment of small-pox, etc.
- 1408. Fines, etc.—how disposed of.
- 1409. Quarantine—how certified.
- 1410. Fees of health officer—how paid.
- 1411. Small-pox hospitals—how provided.
- 1412. Quarantine regulations.
- 1413. Expenses—account of.
- 1414. Expenses—how paid.
- 1415. Vaccine—how distributed.

City corporation, etc., may establish hospitals.

§ 1396. The corporate authorities of any city or town may establish in them, respectively, or in the vicinity thereof, hospitals or pest houses, to be subject to such regulations, not contrary to law, as such corporate authorities may make to prevent the spread of infectious or contagious diseases, but in all cases where such authorities of a town may establish hospitals or pest houses out of their own jurisdictional limits such establishments shall be only on land acquired by such corporation for protection against the spread of disease within its own limits; in all other cases the Justices of the Inferior Court of each County, respectively, are vested with the power to establish such hospitals and make such regulations.

Quarantine—how prescribed and regulated.

§ 1397. The corporate authorities of such town may, from time to time, prescribe the quarantine to be observed by all vessels arriving within the harbor or vicinity of such town, and regulations therefor, not contrary to law; and such regulations may extend to all persons, goods, and effects, arriving in such vessels, and to all persons going on board of the same. Any person violating such regulations, or any of them, after personal notice, or after other notice thereof, given for five days, in such manner as may be prescribed by such corporate authorities, or in the absence of any mode so prescribed, by notice of such regulation for five days in some newspaper in such town, or where there is no newspaper by notice posted up at some public place in such town for the same length of time, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to fine of not more than five hundred dollars; *provided*, nothing herein contained shall prevent the infliction by the corporate authorities

Chapter 2.—Health, Hospitals, Infection, and Quarantine.

having power to pass ordinances or by-laws of such other penalty not exceeding one hundred dollars fine, in lieu of the penalty first above named, as may be prescribed in any such ordinance or by-law.

§ 1398. Any town may establish a quarantine ground therefor at any place within the harbor, if a seaport town, but in such manner as not to interfere with the rights of private property; and the jurisdiction of the corporation of Savannah shall, in cases of quarantine, extend to all ships and vessels which shall enter at any port or inlet from Ossabaw sound to Tybee, including all inlets, rivers, and creeks within those limits.

Quarantine ground—how established.

§ 1399. The health officer or visiting physician of such town may, under the direction of the corporate authorities, cause any vessel arriving therein, or in the vicinity, if the vessel or cargo is in his opinion so foul or infected as to endanger the public health, to be removed to the quarantine ground or other proper place to be inspected, and any master, seaman, or passenger belonging to any vessel supposed to have any infection on board, or from a port where any dangerous infectious disease prevails, refusing to answer on oath such inquiries as may be made by any health officer, relating to any infection or disease, shall be guilty of a misdemeanor, and, on conviction, shall be liable to pay a fine of one hundred dollars.

Vessels may be removed to quarantine—how.

§ 1400. If any person ordered to perform quarantine shall escape, any Justice, on complaint thereof on oath, may issue his warrant to the Sheriff, Constable, or Town Marshal, to arrest and deliver such person to the custody of the officers of the quarantine, and any person attempting to escape may be forcibly detained at the place of quarantine by such officers.

Persons escaping or attempting to escape quarantine—how dealt with.

§ 1401. The master of any vessel ordered to perform quarantine shall deliver to the officer appointed to see it performed his bill of health and manifest, log-book and journal; if he fails to do so, or to repair, in proper time, after notice, to the quarantine ground, or shall depart thence without authority, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than two hundred dollars.

Master of vessels must deliver bill of health, etc.

Penalty for default.

§ 1402. Any person coming into town by land from a place infected with a contagious disease may be compelled to perform quarantine by the health officer, under the direction of the corporate authorities, and restrained from traveling until discharged;

Inland travelers compelled to perform quarantine.

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Penalty for violation of quarantine. and any person thus restrained, traveling before he is discharged, shall be guilty of a misdemeanor, and, on conviction, may be fined in a sum not exceeding one hundred dollars.

Duty of pilots before entering on board of vessels. § 1403. It shall be the duty of any pilot before entering on board of any vessel, to make strict inquiry of every master or commander of the same as to the state of health in such vessel, and in case it be found that any malignant, contagious, or infectious disease is on board such vessel, such pilot shall not enter therein, under the penalty of one hundred dollars and removal from office; and any such master or commander refusing to answer any such reasonable inquiry, or giving false information in answer, may be fined in a sum not exceeding five hundred dollars.

Persons on board of vessels shall observe quarantine. § 1404. No person on board such ship or vessel in which such disease shall exist, or whilst such ship or vessel is performing quarantine, shall come, or be permitted to come on shore or land from such vessel, without permission from the proper authority, under the penalty of fine and imprisonment, at the discretion of the Court, and any person going on board such vessel (except the health officer or visiting physician) and returning without such permission shall be liable to the same penalty.

Proclamation of Governor as to contagious diseases. § 1405. The Governor of this State may, by proclamation, whenever he shall deem it necessary, give such orders to prevent the spread of contagious or infectious diseases within the State, and make such appointments and regulations concerning the same as shall by him be deemed proper, and be stated in such proclamation, and any person violating such orders or regulations may be fined or imprisoned at the discretion of any Court having jurisdiction.

Violators of quarantine may be indicted. § 1406. Any person coming into this State by land or water from any place infected with contagious disease, and in violation of quarantine regulations, may be indicted in any County in which he may be found, and, on conviction, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the common jail at the discretion of the Court.

Persons concealing small-pox indictable. § 1407. Any physician or other person who shall conceal a case of small-pox, or varioloid, or any modification of the same, within any incorporated city, town, or in any County in this State, by not giving immediate notice thereof to the Mayor, Intendant, or health officer, or Justices of the Inferior Court, may be indicted and fined in a sum not exceeding five hundred dollars, or imprisoned at the discretion of the Court.

Chapter 2.—Health, Hospitals, Infection, and Quarantine.

§ 1408. All fines and forfeitures arising out of the violation of any quarantine or other sanitary regulation shall be paid, after deducting the proper expense of collection, into the treasury of the city or County, and may be expended in aid of the quarantine and other sanitary laws, and toward the support of the poor thereof.

Fines for violating quarantine—how disposed of.

§ 1409. It shall be the duty of the health officer of any port, or the authorized visiting physician thereof, after a vessel shall have duly performed quarantine, to give a certificate thereof to the master or commander, under a penalty, for every refusal, of one hundred dollars; and in case of such refusal, or of there being no such health officer or attending physician of the port or place, such certificate shall be granted by constituted authorities of such port or place: the fee for such certificate shall be two dollars for every vessel of more than two hundred tons, and one dollar for every vessel of not more than two hundred tons.

Performance of quarantine—how certified.

Fees for certificate.

§ 1410. For visiting any vessel when required, and granting a certificate of the health of the crew and passengers on board, the fee of the health officer or visiting physician, to be paid by the master of such vessel before she shall be permitted to enter, shall be two dollars—coasting vessels coming from one inlet in the State to another inlet in the same, excepted.

Fees of health officer—by whom paid.

§ 1411. [The Justices of the Inferior Court of each County, or the corporate authorities of any town or city in this State, within the limits of which the small-pox has appeared, or may appear, are authorized and empowered to provide a suitable hospital for those so afflicted, and to furnish them with medical or any other attention that in their judgment those so afflicted may require.] (a)

Small-pox hospitals.

§ 1412. [Such Justices or corporate authorities may also provide proper quarantine regulations to prevent the spread of said disease; *provided*, that no person shall be forced to leave his or her home to go to the hospital aforesaid, when they are properly provided for and guarded at their own expense; said Court shall not pay any expense of any case so situated.] (a)

Quarantine regulations.

§ 1413. [Said Court or corporate authorities shall make, or cause to be made, a proper and just account of all expenses accruing from such quarantine and other attention, either medical or

Expenses—account of.

Chapter 3.—Physicians and Druggists.

nursing, of all they may have under control and who submit to the regulations of said Court or corporate authorities.] (a)

How paid. § 1414. [Said Courts or corporate authorities shall have all accounts properly audited, and forward them to his Excellency the Governor, who shall draw his warrant on the Treasury for the amount set forth in said account or accounts.] (a)

Vaccine—how distributed. § 1415. [The Governor is authorized and required to procure the necessary quantity of genuine vaccine matter, either by purchase or manufacture, at such reasonable compensation as he may contract for, and have the same transmitted to the Justices of the Inferior Courts of each County in this State for immediate use.] (a)

CHAPTER III.

PHYSICIANS AND DRUGGISTS.

SECTION.

- 1416. Who may practice medicine.
- 1417. Allopathic Medical Board.
- 1418. Duty of the Board.
- 1419. Temporary license.
- 1420. Record of Board evidence.
- 1421. Quorum of the Board.
- 1422. Reformed Medical Board.
- 1423. Present Boards continued.

SECTION.

- 1424. Penalty for illegal practice.
- 1425. Defendant must show authority.
- 1426. Board confined to its school.
- 1427. License fee.
- 1428. What physicians exempt.
- 1429. Druggist must obtain license.
- 1430. Must show his authority.
- 1431. Who are exempt.

Who may practice medicine. § 1416. Any white person who has received a diploma from any Medical College of the State of Georgia, without regard to the school, is authorized to practice to the extent of the powers given in said diploma, subject to the provisions hereinafter set forth.

Authority of Board of Physicians. § 1417. There is established in this State a Board of Physicians of the Allopathic School, who have the authority—

1. To meet annually, or oftener, at the call of any three of their number, at [the seat of Government.] (b) Thirty days' notice must be given of annual meetings.

2. To elect all officers and to fill all vacancies.

3. To be a body corporate, with the right to exercise all the powers usual in such associations that are necessary to their organization, if in conformity to the Constitution and laws.

4. To grant licenses to all applicants who under the law are

Chapter 3.—Physicians and Druggists.

entitled thereto, and to fix the fee therefor when not fixed by law.

5. To prescribe a course of reading to those who study medicine under private instruction which shall be obligatory upon all who may apply to the Board for examination.

§ 1418. It is their duty—

1. To grant licenses to practice to all physicians [of their school who present their diplomas from incorporated Medical Colleges of Georgia without examination.] (a) Duty of the Board of Physicians.

2. To grant such licenses to all other persons who undergo a satisfactory examination.

3. To grant license to practice in any particular branch of medicine, or to treat any particular form of disease, if satisfied upon the examination that the applicant is thus competent.

4. To grant licenses to apothecaries upon their standing a satisfactory examination as to their knowledge of drugs and pharmacy.

5. To keep a book in which shall be entered the names of every person licensed to practice or vend drugs, and the extent of the license. Vend drugs.

§ 1419. One member of said Board may grant a license to an applicant to practice until the next regular meeting of the Board, when he shall report the fact, at which time the temporary license is at an end; but such a license shall not be granted by a member after the Board has refused one. Temporary license may be granted

§ 1420. The book so ordered to be kept is a book of record, and a transcript from it, certified to by the officer who has it in keeping, under the common seal, shall be evidence in any Court of this State. Transcript of record—made evidence.

§ 1421. [Four](a) members of said Board constitute a quorum for the transaction of business, and should a quorum not be present on a day appointed for its meeting, those present may adjourn from day to day until a quorum is present. Quorum of the Board.

§ 1422. There is also established a Board of Physicians of the Reformed Practice of Medicine, who have the same authority and must perform the same duties hereinbefore set forth. Authority and duty of Board of Physicians, etc.

§ 1423. The persons and number of persons constituting both of said Boards at the adoption of this Code continue, and all the Present Boards continued.

Chapter 3.—Physicians and Druggists.

provisions of their respective charters are likewise preserved, if not lawfully altered herein.

Penalty
for violating
the provisions
of this
Chapter.

§ 1424. Any person who shall practice surgery, or in any manner prescribe for the cure of diseases for fee or reward, in violation of the provisions of this Chapter, shall be liable to indictment, and, on conviction, shall be fined not exceeding five hundred dollars for the first offense, and for the second, imprisoned not more than two months; one-half of the fine to inure to the informer, the other to the Educational Fund of the County.

Burden of
proof on the
party indicted.

§ 1425. On the trial of such indictment, it is incumbent on the defendant to show that he has authority under the law to practice physic and surgery, to exempt himself from such penalty.

Power of
each Board
confined to
their respective
schools.

§ 1426. Neither Board can license persons to practice in a school of medicine different from their own. Physicians belonging to a school of medicine not represented by a board of physicians may practice under their diplomas alone, and if they have none, are liable as though they had no license and were required to have them.

License fee.

§ 1427. The fee for licenses obtained on diplomas shall not exceed five dollars, and on examination shall not exceed twenty-five dollars.

Physicians
exempt.

§ 1428. Physicians who were in practice prior to the 24th of December, 1847, [or were in practice under legal diploma or license on the first day of January, 1863,] (a) are exempt from all the provisions of this Chapter.

Druggists
must obtain
license.

§ 1429. No person in this State [shall open or keep a drug or apothecary store without first obtaining a license therefor from the Medical Board of his own school. Such license shall be recorded in the office of the Clerk of the Inferior Court, and the Clerk is required to keep a list of the names of the persons licensed in a conspicuous place in his office, for which he shall receive one dollar fee for each license so recorded.] (b)

Druggist
indicted
must show
his authority.

§ 1430. Any person violating the preceding Section is liable to indictment, and, on conviction, to be fined not less than one thousand nor more than five thousand dollars, and for a continuation after said conviction, to the like fine and imprisonment not exceeding six months. The onus of proof is upon the defendant to show his authority.

Chapter 4.—Tavern and Retail Licenses.

§ 1431. Druggists are exempt from obtaining said license who were engaged in said business prior to 24th of December, 1847, and who continue so at the adoption of this Code; and merchants or shopkeepers may deal in medicines already prepared, if patented, or, if not patented, are legally warranted by a licensed druggist.

What druggists are exempt.

CHAPTER IV.

TAVERN AND RETAIL LICENSES.

SECTION.

1432. Retail license—how obtained.

1433. Oath of other venders.

1434. Retailing—confined to one place.

SECTION.

1435. License by corporate towns.

1436. Furnishing liquor to one drunk.

1437. "Retailer" defined.

§ 1432. Persons, before obtaining license to retail spirituous liquors, must apply to the Justices of the Inferior Court of the County in which they desire to retail, who have power to grant or refuse such application. When such application is granted and entered on the minutes the applicant shall execute a bond, with sufficient security, in the sum of five hundred dollars, payable to such Justices, conditioned to keep an orderly house, and to abide faithfully by the oath to be taken by him; which bond shall be taken and approved by the Clerk of the Inferior Court, filed in his office, and recorded in the book kept for that purpose. Any person aggrieved may bring suit on such bond. Licenses granted in any other way are void. They shall also, at the same time, before said Clerk, take and subscribe the following oath:

License to retail liquors—how obtained.

["I swear that I will not, during the next twelve months, sell, barter, give, or furnish spirituous or intoxicating liquors in any quantity to any minor, either white or colored, without the consent of his or her parents or guardian, and that I will not allow others to do so for me with my knowledge or consent. So help me God."] (a)

§ 1433. By the first day in June in each year, and annually thereafter, venders of any quantity of spirituous liquors less than one gallon shall take and subscribe the foregoing oath, and upon neglecting to do so they are subject to all the penalties of retailers without license.

Oath of venders of liquors less than one gallon.

(a) Acts 1866, pp. 19, 20.

Chapter 5.—Vendue Masters and Auctioneers.

§ 1434. Such licenses do not authorize the persons to whom is-
Sale of li-
quors con-
fined to one
place. sued to retail at more than one place in the County, which place
must be stated in the license. Different licenses are necessary for
different places.

§ 1435. Said provisions do not apply to any corporation, town,
Corporate
towns may
grant license
—when. or city which by charter has power to grant licenses; *provided*,
the fees for licenses are at least as much in said city as are re-
quired by law in the County.

§ 1436. A retailer of spirituous liquors shall not sell or furnish
Retailer
shall not sell
to one who
is drunk. liquors, in any quantity, to any person who is at the time intoxi-
cated or drunk; and for violating this provision he shall not only
be liable to all the penalties for retailing without a license, but
he shall not recover by law for any spirituous liquors furnished to
such person during the current year.

§ 1437. The sale of such liquors in quantities less than one
Who is a
retailer. quart make the seller a retailer.

CHAPTER V.

VENDUE MASTERS AND AUCTIONEERS.

SECTION.

1438. Who may be vendue master.

SECTION.

1439. Sale of stolen property.

§ 1438. [Any citizen of Georgia shall have the right to exer-
Who may
be vendue
master. cise all the privileges, powers, and functions of a vendue master,
or auctioneer, in any city or town in this State, by paying such
license and giving such bond as may be demanded or required by
the by-laws, rules, or ordinances of the town or city in which said
person may wish to exercise the calling of a vendue master or
auctioneer.] (a)

§ 1439. [Any vendue master who may sell or dispose of any
Sale of prop-
erty. horse or mule shall be held responsible to the purchaser for dam-
ages, in the event that it be shown and proven that the horse or
mule so sold by him was stolen.] (a)

(a) Acts of 1865-6, p. 260.

CHAPTER VI.

ESTRAYS.

SECTION.

1440. Who may take up estrays.
 1441. Estrays—how disposed of.
 1442. Advertisement of estrays.
 1443. Sale of estrays.
 1444. May be sold on freehold—when.
 1445. Proceeds of sale—how disposed of.

SECTION.

1446. Estrays—how reclaimed.
 1447. Trial of conflicting claims.
 1448. Expense of estrays.
 1449. Default of taker-up—how punished.
 1450. Stone horses may be gelded.

§ 1440. Any person may, upon his own freehold, or the highway thereto, or being in charge of one, and not elsewhere, take up all estrays of animals of a domestic or useful nature, either for their labor or flesh. Who may take up estrays.

§ 1441. The taker-up shall, within five days, exhibit said animal to two freeholders of the militia district where taken up, who shall take down in writing a particular description of its marks, natural and artificial, brands, stature, age, and color, and annex thereto their appraisement of its value, which description and appraisement shall be, by the taker-up, within five days more, handed to the Clerk of the Inferior Court of the County. He shall, at the time of handing the same to said Clerk, make an affidavit before him that the marks and brands of said estray are correct, and have not been altered or disfigured, to his knowledge, since he took it up. Estrays—how disposed of.

§ 1442. Such Clerk shall then copy said appraisement, description, and affidavit in the estray book, and advertise substantial copies of the two first named at the door of the Court House for sixty days, at the place of holding Justice's Court of the district where taken up, and in the public gazette where the Sheriff of the County advertises his sales. Clerk shall copy and advertise appraisements of estrays.

§ 1443. If by the end of that time property is not proven and taken away, the Sheriff of the County shall advertise and sell said estray as he does property under execution, stating it to be an estray and its appraised value. Estrays—when to be sold.

§ 1444. If the property is not of sufficient value to pay the expenses of said proceedings, said Clerk may order it sold by the Sheriff, after ten days' notice, on the freehold where taken up; but he shall make the advertisement in writing, and have one insertion made in such public gazette. When an estray may be sold on the freehold.

§ 1445. The purchase money, after deducting all lawful ex-

Chapter 6.—Estrays.

Proceeds of
sale — how
disposed of.

penses, shall be paid to the Treasurer of the Educational Fund of the County, to be paid to the owner of the estray, if property is proven therein within twelve months.

How an es-
tray may be
reclaimed by
the owner.

§ 1446. Property may be proven by an affidavit of ownership before the Clerk of said Court, and the filing with him bond and security in double the appraised value, payable to the Justices of the Inferior Court, conditioned to answer any demand thereon that may be proven against the obligor within two years.

Conflicting
claims—how
tried.

§ 1447. If more than one person claims said estray before delivery is made, or a counter affidavit to a claim is filed by any person, an issue shall be made thereon and tried by a jury in the Inferior Court, with privilege of appeal.

Expenses
—how deter-
mined.

§ 1448. [The taker-up of any estray shall be entitled to and receive such compensation as shall be awarded and determined by the freeholders before whom said estray may be exhibited as provided in Section 1441 of this Code, and said freeholders are empowered and required to award and determine such compensation as to them may seem reasonable and just from all the circumstances in each case.] (a)

Penalty
against tak-
er-up, for de-
fault in ap-
praising, etc.

§ 1449. The taker-up is liable to the County or the owner, as the case may be, in five times the value of the estray; if after taking it up he fails to have it appraised and returned, or forthcoming, according to law, providential causes only excepted, and if he appropriates it to his own use, and fails to pay said forfeiture after demand in writing by the Clerk of the Inferior Court, he is guilty of a misdemeanor. Suit may also be brought either by the owner or County for the same. He is liable, in like manner for any damage caused by willful abuse or neglect of the animal.

Stone
horses run-
ning at large
may be geld-
ed.

§ 1450. If any stone horse above eighteen months old shall be found running at large, it is lawful for any person to take him up and take him before the nearest Justice of the Peace, and by permission of said Justice, may geld the same, taking care that it is done by a person competent to do so, and that the horse is properly cared for afterwards; the expenses of which shall be paid by the owner.

(a) Acts 1866, p. 20.

Chapter 7.—Marks and Brands.

CHAPTER VII.

MARKS AND BRANDS.

SECTION.

1451. Record of marks and brands.
 1452. Recorded mark preferred.
 1453. Oldest record preferred.

SECTION.

1454. Marking to be done—by whom.
 1455. Change of recorded mark.

§ 1451. All persons having marks and brands on cattle, or other property, in this State, shall have them recorded by the Clerk of the Inferior Court of the County where the owner resides, or, if a non-resident, where the property uses, in a book kept by him for that purpose. Marks and brands must be recorded.

§ 1452. If property shall be in dispute between one whose marks and brands are recorded, and one whose are not, both having the same mark and brand, and such property is found in the possession of him whose marks and brands are recorded, the party claiming can not get possession of the same, but must sue, and prove property and damage. Preference in favor of one having marks and brands recorded.

§ 1453. When two or more persons have the same marks and brands, and both are recorded, the *prima facie* right is with the older record. Oldest record has preference.

§ 1454. Marking and branding shall not take place, except by or under the supervision of some competent person, on pain of forfeiting fifty dollars for each violation, to be recovered at the suit of the informer, who shall have one-half the recovery; the other half goes to the Educational Fund. Marking, etc.—by whom done. Penalty for violation.

§ 1455. Marks and brands once recorded shall not be changed, so as to be of any avail to the owner, without leave is first granted by the Justices of the Inferior Court, and a minute made thereof. Marks, etc., not to be changed without leave.

CHAPTER VIII.

ENCLOSURES AND FENCES.

SECTION.

1456. Requisites of a fence.
 1457. Of other enclosures.
 1458. Owners of stock—when liable.

SECTION.

1459. Stock may be killed—when.
 1460. Poisoning crops.
 1461. Water courses deemed fences.

§ 1456. All fences or enclosures, commonly called worm fences, shall be five feet high, with or without being staked and ridged, What is a lawful fence.

See next page

Chapter 8.—Enclosures and Fences.

and from the ground to the height of three feet, the rails shall not be more than four inches apart. All paling fences shall be five feet from the ground and the pales not more than two inches apart.

Enclosures by ditches, etc. § 1457. Any enclosure, made by means of a ditch or trench, shall be three feet wide and two feet deep, and if made of both fence and ditch, the latter shall be four feet wide, and the fence five feet high from the bottom of the ditch.

When owner is liable for trespass, etc. § 1458. If any trespass or damage shall be committed in any enclosure, not being protected as aforesaid by the breaking in of any animal, the owner of such animal shall not be liable to answer for the trespass, and if the owner of the enclosure shall kill or injure such, in any manner, he is liable in three times the damage.

When owners of enclosures may kill stock for breaking in. § 1459. When fences are made pursuant to law and any animal breaks in, the owner of the enclosure shall not kill or injure him for the first breaking, and not until after notice is given to the owner or agent, if possible, but said last mentioned owner shall be liable for double the damage done by his stock.

Poisoning crops. § 1460. If stock is killed or injured from poisoning crops, or other poisoning upon the premise, the presumption is, that it was done by the person in possession and charge of the same.

When water courses are deemed fences. § 1461. All water courses that are or have been navigable, as far as navigation has ever extended up said streams, shall be deemed and considered fences, whenever, by reason of freshets or otherwise, fences can not be kept on said streams, and shall be subject to the rules applicable to other fences.

CHAPTER IX.

FIRING THE WOODS.

SECTION.

1462. Woods may be fired—when, etc.
1463. Notice must be given.

SECTION.

1464. Penalty for firing without notice.
1465. Woods catching fire by negligence.

When and by whom woods may be fired. § 1462. No person but a resident of the County where the firing is done, owning lands therein, or domiciled thereon, outside of any town incorporation, shall set on fire any woods, lands, or marshes; nor shall such persons, except between the twentieth of February and the first of April, annually.

Chapter 10.—Mills and Millers.

§ 1463. When such person shall desire to set fire within said time, he shall notify all persons who occupy lands adjoining him by residence thereon, or cultivation, or enclosure of any portion of the tract or settlement, of the day and hour of the firing, at least one day prior thereto. Such notice need not be given if, on a sudden emergency, due caution should require firing to render one's premises safe.

One firing
woods must
give notice.

§ 1464. Any person setting fire in violation of the two preceding Sections forfeits five hundred dollars, upon the suit of any informer—the one-half to him, the other to the Educational Fund of the County—and is also liable for the actual damages any person may have sustained.

Penalty for
setting fire
without no-
tice.

§ 1465. Persons, either by themselves or agents, who permit fire to get into the woods, lands, or marshes, through neglect, are within the meaning of said Sections.

Penalty
for letting
woods catch,
etc.

CHAPTER X.

MILLS AND MILLERS.

SECTION.

1466. Grain—in what order ground.
1467. Penalty for failure.

SECTION.

1468. "Public mills" defined.

§ 1466. All owners or occupants of mills shall well grind all clean and dry grain, and in due turn, as far as ten bushels in the turn, as the same may be brought, and may take for toll one-eighth part thereof.

Grain to be
ground in
turn.

§ 1467. Every such person who shall not so grind, except in time of drought, or for other sufficient cause, or not in due turn, or take or exact more toll, shall forfeit and pay for each offense, to the party injured, twenty dollars; *provided* such miller may do his own grinding first.

Penalty for
not grinding
according to
turn.

§ 1468. All grist mills which grind for toll for any person are public mills within the meaning of this Chapter.

What are
public mills.

CHAPTER XI.

GUNPOWDER.

SECTION.
1469. Transported gunpowder, etc.
1470. Penalty for not marking.

SECTION.
1471. Keeping gunpowder, etc.

Gunpow-
der must be
marked.

§ 1469. All owners, agents, or others who have any gunpowder, more than five pounds, transported upon water, railroad, or otherwise, shall have the word *gunpowder* marked upon each package so transported, in large letters.

Penalty
for transpor-
ting gun-
powder con-
trary to law.

§ 1470. Gunpowder transported in violation of said provision shall be liable to seizure and forfeiture by any officer who may execute a criminal warrant under warrant for that purpose, issued by any officer who may issue such first named warrants—one-half of the same to go to the informer, the other half to go to the Military Fund of the State, after public sale, by order of the officer issuing the warrant, or one of like power.

Regula-
tions for kee-
ping gun-
powder.

§ 1471. The several incorporated towns or cities of this State, within their corporate limits, and the Justices of the Inferior Court within their respective Counties, out of said corporate limits have authority to make and enforce all needful rules and regulations touching the keeping of gunpowder so as not to endanger the lives and property of the citizens.

TITLE XVI.

REGULATIONS OF AGRICULTURE, TRADE, AND COMMERCE.

CHAPTER I.

BANKS AND BANKING.

- ARTICLE 1.—*Bank Returns.*
ARTICLE 2.—*Obligations and Penalties.*
ARTICLE 3.—*Forfeiture of Charters and Liability of Stockholders.*

Article 1.—Bank Returns.

ARTICLE I.

BANK RETURNS.

SECTION.

1472. Bank returns—how made.
 1473. Contents of returns.
 1474. Oath of officers shall be annexed.

SECTION.

1475. Expense of advertising.
 1476. Bank refusing to make returns.
 1477. False affidavit perjury.

§ 1472. It is the duty of the Governor, twice in each year, to advertise for at least two weeks in a public gazette at the seat of Government a call upon every banking institution of this State, and branch thereof, to make returns to him, under the oaths of their several presidents and cashiers, of their respective conditions at a time to be specified in such advertisement, and to transmit the same to him within thirty days from said dates.

Call for
bank returns
to be adver-
tised by
Governor.

§ 1473. Such returns shall embrace—

1. The names of the Presidents and Directors, and a list of the stockholders on the day of the regular weekly meeting of the President and Directors next preceding the date of his requisition. The list of stockholders may be given but once a year.

Contents
of the re-
turns.

2. The amount of stock owned by each individual or company, and the amount of money actually paid in on each share.

3. The amount of bills on other banks of this State, of gold, silver, and bullion in their vaults.

4. The amount of debts due them, within and without the State, so designating them, which may be denominated specie funds.

5. The active or running paper, the amounts in suit under protest, and not in suit, clearly stating what amount of all such debts is good, what doubtful, what bad, and what lost.

6. The amount of bills in circulation, the amount on deposit, and the highest amount due and owing by each bank.

§ 1474. The original oaths aforesaid shall be annexed to said returns, stating them to be just and true, and moreover, that since the last return, their respective banks, to the best of affiants' knowledge and belief, have not violated nor evaded any obligation imposed by law, either by itself, its officer, or agents.

Oath of of-
ficers to be
annexed to
returns.

§ 1475. The banks are required to publish their several reports in some public gazette of this State, at their expense, and on failing to do so, within thirty days, it is the duty of the Governor to make public advertisement of the fact, and to order all collec-

Expense
of adverti-
sing—by
whom paid.

Article 2.—Obligations and Penalties.

tors of the public money to refuse to receive their bills. The Governor shall also publish the reports, the cost of which the defaulting banks shall be bound for, as a tax levied, which shall be collected by execution issued by the Comptroller General.

§ 1476. Any bank refusing to make out and return said reports, as required by law, forfeits and pays to the State a tax of two per cent. per month upon their capital stock, from the time of such refusal, to be levied and collected by execution at the end of each month, by the Comptroller General; the bills of said banks shall likewise not be received, as prescribed in preceding Section.

§ 1477. Perjury may be assigned on such affidavits, and the name of a person signed thereto, authorized to administer an oath, shall be evidence of the swearing.

ARTICLE II.

OBLIGATIONS AND PENALTIES.

SECTION.

- 1478. Prohibitions imposed on banks.
- 1479. Qualification of Section.
- 1480. Certain contracts void.
- 1481. Violation of No. 3 Section 1478.
- 1482. Violation of Nos. 4 and 5, Sec. 1478.
- 1483. Proof prescribed.
- 1484. Violating No. 6, Section 1478.

SECTION.

- 1485. Violating No. 7 of Section 1478.
- 1486. Obligations imposed on banks.
- 1487. Violating No. 1 of Section 1486.
- 1488. Proceedings for such violations.
- 1489. Violating Nos. 2 and 3 of Sec. 1486.
- 1490. The term Bank—what it includes.

§ 1478. The banks of this State shall not—

1. Loan money, directly nor indirectly, on any note, bill, draft, or contract of any sort, at a greater rate of interest than seven per cent. per annum.

2. Discount or purchase any paper or debt at a greater discount than said rate.

3. Sell any kind of exchange, except sight checks, or demand or receive for exchange, in or out of this State, of any citizen thereof, a greater premium than one per cent. upon the amount of exchange sold, when the bills of the bank from which the exchange is sought are presented at its counter in payment thereof.

4. Issue paper or promises to pay, intended to be used as money, redeemable otherwise than with gold or silver coin, at the standard value thereof.

5. Issue such paper, or pay, or tender in payment, any paper,

Article 2.—Obligations and Penalties.

payable at a greater length of time than three days from the date thereof.

6. Issue, pay away, or circulate any bank bill, note, ticket, or paper, of the nature or appearance of a bank note meant for circulation, or of a denomination less than five dollars, with the exception that all solvent and specie paying banks may issue small bills of the denominations one, two, three, and four dollars, to an amount not exceeding twenty per cent. of their capital stock, to be computed as part of their circulation.

7. Issue bills beyond the amount specified in their charter.

§ 1479. Nothing in the foregoing shall be so construed as to restrict the bank to said rate, in the sale or purchase of foreign bills, provided that the said foreign bill is a *bona fide* commercial bill, and not a loan or accommodation by the bank; and that the exchange is legitimate commercial exchange, and the transaction not in fact a loan or accommodation in which the law is attempted to be evaded by resorting to the form of a bill of exchange, foreign bill, or draft. Qualification of preceding Section.

§ 1480. Every contract, note, bill, draft, or paper made in violation of the provisions of numbers 1 and 2 of Section 1478, and of the next succeeding Section, are declared null and void. Certain contracts, etc., void.

§ 1481. For a violation of number 3 of the same Section the person paying the premium may recover three times the amount of the excess by a summary proceeding before any Court having jurisdiction, on which judgment may be rendered at the first term. The suit may be either against the bank, its officer, or agent: in either case the property and effects of the bank are subject to the judgment. Penalty for violating the 3d item of Section 1478.

§ 1482. For a violation of numbers 4 and 5 of Section 1478 the bank forfeits one thousand dollars for each bill or paper so issued, to be recovered by action at the suit of the informer—one-half to go to him, the other half to the Educational Fund of the County where the recovery is had. Penalty for violating the 4th and 5th items of Section 1478.

§ 1483. The officer or agent who received the premium shall appear without any process than the service of the writ, and bring his book having the original entry of the transaction, and give evidence in the case. If he fails to appear, the affidavit or testimony of the plaintiff shall be received. Mode of proof prescribed.

§ 1484. For the violation of number 6 of Section 1478 the bank forfeits five hundred dollars for each small bill so issued beyond

Article 2.—Obligations and Penalties.

Penalty for violating 6th item of Section 1478. the twenty per cent., or amount allowed by charter, to be recovered as in cases of numbers 4 and 5, unless a different penalty is prescribed by charter.

Penalty for violating 7th item of Section 1478. § 1485. For the violation of number 7 of Section 1478 the bank so violating forfeits its charter.

§ 1486. The banks of this State shall—

Obligations imposed on banks.

1. Pay specie for any of their bills, notes, drafts, or other obligations when due and demanded by the holder.

2. Receive their own bills, notes, certificates of deposit, or other evidence of debt, in payment of debts due them.

3. Receive their own bills at par, whether issued or made payable at the parent bank or any of its branches, in settlement of debts or balances due either, and when notes or other obligations are discounted by any bank, and become transferred to another bank, they continue payable in the bills of the bank where discounted.

Penalty for violating 1st item of Section 1486.

§ 1487. For the violation of number 1 of Section 1486 the bank shall pay, besides the legal interest, twenty-five per cent. damages, each of which must be specified in the verdict and judgment, and the execution issued thereon shall be collected in specie.

Proceeding for such violation.

§ 1488. The Governor shall also cause judicial proceedings to be instituted against such bank for the forfeiture of its charter, but the defaulting bank may, within five days after such demand and refusal, produce satisfactory evidence that there was an indebtedness then due to said bank by the person demanding specie equal to the amount demanded, and the Governor may, in his discretion, forbear or postpone the proceeding.

Penalty for violating 2d and 3d items of Section 1486.

§ 1489. For the violation of numbers 2 and 3 of Section 1486 the bank shall forfeit to the debtor twenty per cent. upon the amount to be recovered by special suit in his favor, or in any other form of litigation between them. The special deposit of the proper amount in another bank, or in the hands of a solvent stakeholder, with notice to the bank, is a payment.

The term bank includes what.

§ 1490. The term bank includes the parent bank, its branches, if any, and agencies, its officers of every description, and agents, in construing the violation of an obligation or the imposing a penalty for the acts of whom the bank or branches, as the case may be, is bound.

Article 3.—Forfeiture of Bank Charters and Liability of Stockholders.

ARTICLE III.

FORFEITURE OF BANK CHARTERS AND LIABILITY OF STOCKHOLDERS.

SECTION.

- 1491. Bank charter forfeited—for what.
- 1492. Proceedings—how instituted.
- 1493. Duty of receiver.
- 1494. Compensation of receiver, etc.
- 1495. Order of paying debts, etc.
- 1496. Debts due insolvent banks.

SECTION.

- 1497. Stockholders may be sued—when.
- 1498. Abatement of suit.
- 1499. Assignment by bank.
- 1500. How set aside.
- 1501. Want of assignee—how supplied.
- 1502. Stockholder may transfer stock.

§ 1491. Bank charters are subject to forfeiture for the same general grounds as those of other corporations, and also—

For what
bank charter
may be for-
feited.

1. For the violation of any of the provisions of their charters.
2. For the violation of any obligation imposed by law, unless contrary to the contracts of their charters.
3. Whenever it is demanded by special enactment.

§ 1492. When the Governor is informed that a bank incurs the penalty of a forfeiture, he shall cause the Attorney General to institute proceedings therefor in the County where the bank or parent bank is located, and in his discretion may employ assistant counsel to aid therein, and pay him out of any money not otherwise appropriated. If there is a verdict of forfeiture rendered on the trial, the Judge shall pronounce the judgment for all purposes whatever, saving the use of its corporate name in collecting and paying its debts, and in conveying its real and personal estate, which power shall be exercised by a receiver appointed by the Court for that purpose at that time, or any time, upon the application of the prosecuting officer showing good cause.

Proceed-
ings—when
and how in-
stituted.

Judgment.

§ 1493. It is the duty of such receiver—

1. To promptly collect the debts due said bank, and to convert the property into cash or available assets as soon as practicable.

Duty of re-
ceiver.

2. To pay the creditors *pro rata* semi-annually, according to the dignity of their claims, unless there is sufficient to pay all.

3. To pay the holders of the bills before other creditors, if they give notice of their claims within six months.

4. To give notice to said bill holders and other creditors, by a three months' publication in some public gazette of the State.

5. To make annual returns of his receipts and disbursements to the Judge of the Superior Court of the County, at the first

Article 3.—Forfeiture of Bank Charters and Liability of Stockholders.

term held every year; to produce vouchers and swear to the return, which shall be passed upon by said Judge, and entered on the minutes by the Clerk.

6. To distribute the assets, after paying all the debts of the corporation, among the stockholders in proportion to their stock.

§ 1494. On failure to comply substantially with any of the above requirements, he forfeits his compensation. His compensation shall be the same as that allowed administrators; but upon special application, the Court may allow, for good cause shown, additional compensation.

§ 1495. If the bank is insolvent, the order of paying off the debts shall be the same as is prescribed in cases of administration, to the extent applicable, except where special preference or postponement is given by law.

§ 1496. Debtors are not, in such a case, allowed to pay their debts to the receiver in bills of the bank at their par value, unless accompanied by an affidavit that they are the identical bills received from the bank by which the debt was created.

§ 1497. If the assets of the bank are insufficient to pay all its liabilities, the receiver shall bring suit against the stockholders in his own name for their unpaid stock to an amount which will be their proportion for the liquidation of all the debts; and on his failure to do so, any creditor may use his name for that purpose.

§ 1498. Suits do not abate by reason of a vacancy in the receivership, but proceed on motion, and without any *scire facias* in the name of the new receiver.

§ 1499. When a bank surrenders its charter, or the use thereof, it may make, in good faith, an assignment of all its effects for the payment of its debts, as natural persons may, but it can not thereby prevent such preference among its creditors as the law gives.

§ 1500. A creditor or stockholder may move, in six months, to set aside such assignment, by petition addressed to the Superior Court of the County where the bank is located, setting forth the grounds of complaint, which shall stand for trial before a special jury at the first term of the Court. If the assignee resides in the County, he must be served as in other cases; if not, the leaving a copy at the banking-house shall be sufficient service. The service shall operate as an injunction until the judgment of the

Chapter 2.—Notaries Public.

Court. If the assignment is set aside, a receiver must be appointed.

§ 1501. A good assignment shall not fail for the want of an assignee, but the Court, in vacation or term time, may appoint a receiver who shall execute the assignment. How want of assignee may be relieved.

§ 1502. When a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability, unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable; *provided*, he shall give notice once a month, for six months, of such transfer, immediately thereafter, in two newspapers in or nearest the place where such institution shall keep its principal office. How stockholder in bank, etc., may transfer his stock.

CHAPTER II.

NOTARIES PUBLIC.

SECTION.

- 1503. By whom appointed.
- 1504. Their oath of office.
- 1505. Their term of office.
- 1506. Their qualification.

SECTION.

- 1507. Their jurisdiction.
- 1508. Their authority.
- 1509. Must have a seal, etc.

§ 1503. The power to appoint Notaries Public is vested in the Justices of the Inferior Court exclusively.

Notaries Public — by whom appointed.

§ 1504. Before entering on the duties of their office, they shall take and subscribe before the Clerk of the Inferior Court the following oath, which shall be entered on his minutes:

Oath of Notaries Public.

[I, ———, do solemnly swear, or affirm, that I will well and truly perform the duties of a Notary Public for the County of ———, to the best of my ability; and I further swear, or affirm, that I am not the holder of any public money belonging to the State, and unaccounted for. So help me God.] (a)

§ 1505. They hold their offices for four years, revocable at any time by said Justices, at the end of which time, if continued, they must be renewed on the minutes. The Clerk must issue to them certificates of their appointment and qualification, and keep a register of their names.

Their term of office.

Chapter 2.—Notaries Public.

Age and character of Notary. § 1506. A Notary must be twenty-one years old, or an attorney at law, and of good moral character.

Where their office may be exercised § 1507. Their notarial acts can only be exercised in the County of their residence and appointment. Removal from the County vacates the office.

§ 1508. They have authority—

Authority of Notaries. 1. To take the acknowledgments of all writings relating to commerce or navigation, and to witness such deeds and papers as they are permitted to by law.

2. To demand acceptance and payment of all commercial paper, or paper entitled to days of grace, and to note and protest the same for non-acceptance or non-payment.

3. To certify to all official acts when required.

4. To administer oaths in all matters incident to them as commercial officers, and [all other oaths which are not by law required to be administered by a particular officer.] (a)

5. To exercise all other powers incumbent upon them by commercial usage or the laws of this State.

Notarial seal and register. § 1509. For the authentication of their notarial acts, each Notary must provide a seal of office, which shall have for its impression his name, officially, and the name of the State and County for which he was appointed. After the first of January, 1863, a scrawl shall not be a sufficient notarial seal. [No seal is required to his attestation of deeds.] (a) He must keep a fair register of all his notarial acts signed by him, together with the date of the transaction.

CHAPTER III.

SHIPS AND SEAMEN.

ARTICLE 1.—*Pilotage.*

ARTICLE 2.—*Seamen.*

(a) Acts of 1863-4, p. 59.

Article 1.—Pilotage.

ARTICLE I.

PILOTAGE.

SECTION.

- 1510. Commissioners—how appointed.
- 1511. Their powers.
- 1512. Pilot's oath and license.
- 1513. His bond.
- 1514. Forfeiture of license.
- 1515. Commissioners' powers and duties.
- 1516. License—non-user of.
- 1517. Pilot's duty.
- 1518. Master rejecting pilot.
- 1519. Pilot bringing in vessel.
- 1520. Pilot may have a substitute.
- 1521. Notice to pilots.
- 1522. Pilot must moor vessel.
- 1523. His fees—payment of.
- 1524. Carrying off or detaining pilots.
- 1525. Fees of pilot boat in certain cases.
- 1526. Letters—delivery of.
- 1527. Pilot's fees in special cases.
- 1528. Pilots in default—penalty.
- 1529. Damages to—by whom settled.

SECTION.

- 1530. Record of rules must be kept.
- 1531. Subject to inspection.
- 1532. Commissioners' office—where kept.
- 1533. Compel attendance of witnesses.
- 1534. May punish defaulting witnesses.
- 1535. Witnesses may be cited.
- 1536. Subpœnas and interrogatories.
- 1537. Fees for serving and executing.
- 1538. Appeal—when allowed.
- 1539. Testimony after appeal.
- 1540. Fees, etc.—how disposed of.
- 1541. Pilots receive certificates—when.
- 1542. Branch pilots—how appointed.
- 1543. Penalty for discharging ballast, etc.
- 1544. Proceedings against master.
- 1545. Pilot failing to give notice.
- 1546. Incorporated towns—powers of.
- 1547. Suits—by whom brought.
- 1548. Present Commissioners continue.

§ 1510. The corporate authorities of Savannah, Darien, Brunswick, and Saint Marys, shall have power respectively to appoint Commissioners of Pilotage, not exceeding seven in number, for each place, of whom a majority shall be a quorum, as follows—that is to say: The authorities of Savannah for the Bar of Tybee, and River Savannah, and the several bars and inlets north of Sapelo Bar; the authorities of Darien for Sapelo Bar, and River Altamaha, and for the several bars and inlets south of Sapelo Bar as far as St. Simon's Bar; the authorities of Brunswick for the Bar of St. Simons, and Turtle River, and the several bars and inlets north of the Great Satilla River; and the authorities of St. Marys for the Bar of the Great Satilla River, the Bar of St. Marys, and all bars and inlets between the two. All vacancies shall be filled by such corporate authorities respectively in the Board of Commissioners in which a vacancy shall occur, but no owner or part owner of a pilot boat shall be allowed to act as Commissioner of Pilotage.

Commissioners of Pilotage—how appointed.

§ 1511. The said Commissioners are empowered to license such persons, being citizens of the United States, of good character, as they shall think most fit to act as pilots for the conducting of vessels inward to, and outward from, the several ports for which they shall be licensed, during their good behavior. Pilots already

Powers of Commissioners of Pilotage.

Article 1.—Pilotage.

licensed for any of said ports shall continue to act until removed for cause. No person other than a duly licensed pilot shall be entitled to receive any fee, gratuity, or reward, for conducting or piloting any vessel inward to, or outward from, any of the ports or harbors for which a pilot shall be licensed. Any person so acting without authority, or interfering with or disturbing a licensed pilot in the way of his duty, may, on conviction, be fined and imprisoned at the discretion of any Court having jurisdiction; but any person may assist a vessel in distress without a pilot on board, if such person shall deliver up the vessel to the first pilot who comes on board and offers to conduct it.

§ 1512. The license to a pilot must be in the form of a certificate of his appointment, which must be signed by a majority of the Commissioners, or by their chairman, by their direction, and each pilot, on receiving his license, shall take and subscribe an oath in the following form:

“I, A. B., appointed pilot for the port and harbor of ———, do swear that I will faithfully and according to the best of my ability, perform the duties of a pilot in and for the said port and harbor of ———, and will, at all times—wind, weather, and health, permitting—use my best endeavors to repair on board every vessel I shall see, and conceive to be bound for, coming into, or going out of the said port and harbor, unless I am well assured there is some other licensed pilot on board the same; that I will, from time to time, make the best dispatch in my power to convey any vessel committed to my charge coming into or going out of said port and harbor, and will at all times well and truly observe, fulfill and follow, to the best of my skill and judgment, all such orders and directions as I may receive from the Commissioners of Pilotage in all matters and things relating to the duty of a pilot.

§ 1513. Before receiving his license, the pilot must make and deliver to the Commissioners a bond payable to the Chairman of the Board, and his successor in office, in the penal sum of two thousand dollars, with security, to be approved by the Commissioners, and with condition faithfully to perform his duties as pilot, which bond shall be renewable at the discretion of the Commissioners, with such security or additional security as they may require.

§ 1514. The Commissioners may deprive any pilot of his li-

Article 1.—Pilotage.

cense for want of skillfulness, for a willful violation of his duties, or the orders or regulations of the Commissioners; for negligently or carelessly losing or injuring any vessel in his charge; or when laboring under mental derangement, or when so addicted to habits of intoxication as to unfit him, in their judgment, to be entrusted with the charge of a vessel; but in every such case an appeal may be had, as is hereinafter provided.

§ 1515. The Commissioners shall have power, and it is their duty, to prescribe rules and regulations for the government of pilots, and to prescribe the fees for their services, and they may also impose such penalties for neglect of duty, not inconsistent with this law, as they may think proper; but until altered by competent authority, the fees of pilots shall remain as now fixed by law.

§ 1516. Any pilot who fails to act as pilot for three months, or absents himself for ten days at any one time without leave of the Commissioners, may be deprived of his license; and any pilot who shall, with knowledge of the arrest of any vessel under civil process from any Court of Record of this State, conduct or pilot such vessel out of the port or harbor where such arrest is made, and whilst such vessel is in charge of a civil officer, shall forfeit his license and be forever disqualified from acting as pilot, besides forfeiting such sum as a jury may assess for damages.

§ 1517. Every pilot boat cruising, or standing out to sea, must offer the services of a pilot to the vessel nearest the bar, unless a vessel more distant be in distress, under penalty of fifty dollars for each and every neglect or refusal, either to approach the nearest vessel, or to aid her if required, or to aid any vessel in sight showing signals of distress; and the Commissioners, or a majority of them, may, for such neglect or refusal, deprive the pilot of his license.

§ 1518. Any person, master or commander of a ship or vessel bearing toward any of the ports or harbors of this State, except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida, and who refuses to receive a pilot on board, shall be liable, on his arrival in such port of this State, to pay the first pilot who may have offered his services outside the bar, and exhibited his license as a pilot, if demanded by the master, the full rates of pilotage established by law for such vessel.

License of pilot — how forfeited.

Power and duty of Commissioners as to pilotage.

License forfeited by non-user and absence,

And for piloting vessels under arrest.

Duty of pilots.

Master rejecting pilot to pay his expenses.

Article 1.—Pilotage.

§ 1519. The pilot who brings a vessel into port shall have the exclusive right to take her out, unless the master of such vessel shall prove, to the satisfaction of the Commissioners that such pilot misbehaved himself whilst in charge of the vessel, or was, in the meantime, deprived of his license, or that such pilot had obtained the inward pilotage against the right of some other pilot first offering his services, and in any of these cases another pilot may be employed.

Pilot bringing in a vessel has a right to lead it out.

§ 1520. Any pilot having the right to take a vessel out of port may attend in person, or procure another person out of the pilot boat to which he is attached to attend for him: and if any master or owner of any vessel in port employ any other pilot to carry his vessel down the river, or to sea, but the pilot who brought her in, or one belonging to the same boat, unless good and sufficient cause shall appear therefor, on due proof thereof before the Commis-

Pilot may offer substitute.

Penalty against master for employing another pilot.

Penalty against pilot for not going out with vessel.

Penalty for piloting without right.

sioners, he shall be liable to a fine not exceeding one hundred dollars—one-half to the pilot lawfully claiming the pilotage of the vessel; but should such pilot neglect or refuse to attend, and carry down such vessel when ready for sea (wind, weather, and tide permitting) when thereunto required by the master, owner, or consignee, such pilot shall, on conviction thereof before the Board of Commissioners, forfeit the upper pilotage of such vessel, and be liable to a fine not exceeding one hundred dollars, and any pilot acting on board such vessel when he has no right shall be liable to the same penalty, and shall, moreover, be liable to the pilot having the right for carrying the same vessel out; *provided*, the Commissioners have not sufficient evidence of the necessity of his acting.

Pilot to be notified of vessel's departure.

§ 1521. The master of a vessel in readiness to leave must, if practicable, give notice to the pilot entitled to conduct the vessel out, of his intention to leave, or to some other pilot belonging to the same boat; *provided*, such pilot be at the place of departure of such vessel, or near thereto.

Pilot must moor vessel.

§ 1522. Every pilot in any of the harbors aforesaid bringing any vessel to anchor in any of said harbors, shall moor such vessel, or give proper directions for the mooring of the same, and the safe riding thereof, subject only to the legal harbor regulations of each port.

§ 1523. A pilot bringing a vessel into port shall be entitled to his fees before her departure from port—to be paid in advance, or

Article 1.—Pilotage.

security given for the payment; and on failure thereof he may refuse to carry the vessel out, and all fees for pilotage may be demanded and recovered, in any Court having jurisdiction, from the owner, master, or consignee of the vessel; and if any licensed pilot shall ask or demand more fees for his services than are specified in the rates of pilotage, on due proof thereof before the Commissioners, he shall forfeit double the amount of such vessel's pilotage.

Pilot's fees to be paid before vessel leaves.

§ 1524. The owner, master, or consignee of any vessel carrying off any pilot of such vessel, and against his consent, to any port, either foreign or on the coast, shall be liable to such pilot, in an action on the case, for the payment of all reasonable expenses, and for the further sum of not exceeding three dollars a day, during the necessary absence of the pilot; *provided*, the carrying away of such pilot be not owing to any default, misconduct, or negligence on his part; and the master of a vessel detaining a pilot on board his vessel, the wind and weather permitting him to go to sea, shall be liable to pay such pilot three dollars a day for every day he is so detained.

Penalty for carrying off or detaining pilot.

§ 1525. When any pilot boat belonging to a different pilot than the one who may have conducted a vessel out to sea takes such pilot off from such vessel, such pilot boat shall be entitled to one-third of the pilotage.

Fees of pilot boat for taking pilot from vessel.

§ 1526. Whenever a vessel shall touch off the Bar of Tybee for instructions, any pilot delivering on board such vessel any letters or orders shall be allowed full Bar or Cockspur pilotage in and out.

Pilot's fees for delivering letters, etc.

§ 1527. Any pilot belonging to any port in this State, meeting at sea with any vessel bound to another port within the same, shall, if capable and thereunto required, take charge of and pilot such vessel into such port, and shall be paid two dollars per day for every day such pilot may be on board such vessel at sea, without the bars, over and above the usual rate of pilotage, and no other pilot shall interfere while the former is willing to continue his services.

Pilot's fees for carrying vessel to another port.

§ 1528. If any vessel whatsoever, or the cargo or freight thereof, shall receive any damage or miscarriage, or be lost, through the negligence or default of any pilot, after such pilot takes charge of the same, and the claim exceeds one hundred dollars, the said pilot shall, in such case, on conviction thereof before

Default of pilot — how punished.

Article 1.—Pilotage.

any Court of Record in this State, be obliged to answer and make good to the sufferers, or the master of said vessel, all and every the damages which he shall sustain thereby.

§ 1529. All other cases of damage or difference that may arise or be made against any master or pilot, for or concerning the pilotage of any vessel, or any other matter relative to the business or care of a pilot, in any of said harbors, shall be heard and determined by the Commissioners, or a majority of them, appointed for the care of the pilotage where such damage or dispute shall arise, who, by their decree or order, shall lawfully decide and regulate every such damage or difference, and who shall have power to enforce such decree or order by execution or warrant of distress under their hands and seals, or the hands and seals of any three of them, directed to any Sheriff or Constable of the County where such execution issues, commanding the sale of the offender's goods, or so much thereof as shall be sufficient to satisfy such execution or warrant, and all sales thereunder shall be conformable to the laws of the State in other cases of sale; and such Sheriff or Constable shall be liable to be ruled before the Judge of the Superior Court as in other cases, in term time or vacation, for any default in duly executing such process; but in case of a sentence or judgment for more than twenty dollars, an appeal may be had, as is hereinafter provided.

Other cases of damages to be settled by Commissioners.

§ 1530. The Commissioners shall preserve, in a neatly bound book, a record of all their acts, and of the rules and regulations adopted by them for the direction and government of the pilots; but in the city of Savannah such rules and regulations shall not be operative until approved by the City Council. They must designate one of their number as Chairman, and cause a record thereof to be made, and prescribe such fees for the service of the pilots, and impose such fines and penalties not inconsistent with the provisions of this Chapter, as they may deem expedient. They must also preserve upon record a list of all persons appointed pilots by them, as well as those by them suspended.

§ 1531. All persons interested shall have access to, and be permitted to have, copies of the records; and copies thereof certified by the Chairman or Secretary shall be presumptive evidence of the facts therein stated. The Secretary of the Commissioners shall have such salary or fees as the Commissioners may determine, and such salary or fees shall be paid out of fines and for-

Commissioners must keep a record of rules, etc.

Fees of Secretary.

Article 1.—Pilotage.

feitures, or such other fund as shall be under the control of the Commissioners.

§ 1532. The office of the Commissioners must be kept in some suitable place, of which the public shall have notice, and their books, papers, and records, may be kept in such office, or in the office of any Court of Record in the County.

Office
and records
of Commis-
sioners, etc.

§ 1533. When the attendance of any person shall be required as a witness before the Commissioners of Pilotage in any matter or claim of which they shall have jurisdiction, it shall be the duty of their Secretary, on application, to issue summonses in the nature of writs of subpoena, to be signed by him and directed to the persons whose attendance shall be required, when such persons reside in the County where such matter or claim may be depending. The summons shall express the cause and the party at whose suit it shall be issued, and shall be served on such witnesses at least twenty-four hours before the meeting of the Commissioners to which it shall be returnable, and it shall be served by the messenger of such Commissioners, or a Constable, and the return of such officer shall be evidence of the service of the subpoena.

Commis-
sioners may
compel at-
tendance of
witnesses.

§ 1534. Any witness thus summoned, whose testimony shall appear to be material, and who shall fail to appear, may be attached by the Commissioners, and the attachment shall be directed to a Sheriff or Constable, and made returnable to the next Superior or Inferior Court of the County; and such Court may fine such witness in a sum not exceeding one hundred dollars, unless a good excuse be made to the Judge of said Court, but such witness shall nevertheless be liable to action at the suit of the party injured by such non-attendance.

May pun-
ish default-
ing witness-
es.

§ 1535. When any witness may be a seaman or transient person, the Commissioners may issue subpoena to such witness by their Secretary, requiring such witness to appear at a time and place therein stated before any Justice of the Peace, or of the Inferior Court of the County, to answer written interrogatories to be propounded to him.

May cite
witnesses to
answer in-
terroga-
tories.

§ 1536. The subpoena must be served twenty-four hours before it is returnable, and notice for the same length of time must be given to the adverse party, or attorney, agent, or consignee, of the time and place of putting such interrogatories. The officer taking the depositions shall seal up and properly endorse and return such depositions, which may be offered by consent or by order of the

Service of
subpoenas
etc.

Article 1.—Pilotage.

Commissioners, and shall stand in the place of the oral examination of such witness, when his personal attendance can not be procured.

§ 1537. The Secretary's fees for each subpoena shall be twenty-five cents; for each attachment fifty cents; for examining a witness the Justice of the Peace shall receive one dollar; the Sheriff or Constable, for serving any subpoena, shall receive twenty-five cents, and for executing and returning an attachment to Court, fifty cents.

§ 1538. In any case where a pilot shall be suspended, or where a fine exceeding the sum of twenty dollars shall be imposed by any judgment or decision of the Board of Commissioners, or where the license or warrant of a pilot shall be revoked, then the person so fined, or the pilot so suspended, or whose license or warrant shall be revoked, may petition the Judge of the Superior Court of the County where such judgment or sentence may be made, setting forth, on oath, the circumstances of the case, a copy of which petition shall be served on the acting Chairman or Secretary of such Board at least three days before the return of any rule thereon; and if, on reading such petition, the Judge shall think there is sufficient ground for the allowance of an appeal, he shall therein direct an issue to be made up between such Commissioners and the appellant, which issue shall be tried by a special jury, as in other appeal cases, at the next term of the Superior Court, unless good cause be shown for a continuance; and if, upon such trial, a verdict shall be rendered in favor of the appellant, the said Judge shall make a rule remitting such fine, or restoring the suspended pilot, or the pilot whose warrant or license may have been revoked as aforesaid.

§ 1539. In the case of an appeal, as aforesaid, commissions may issue to take the depositions of any person not a resident of the County, or whose oral testimony can not be conveniently had, as in other cases, before such Superior Court, but no such commissions shall issue but upon three days' notice to the opposite party, by service of a copy of the interrogatories to be exhibited as in other cases.

§ 1540. All fines and forfeitures collected by the Commissioners shall be applied toward payment of the ordinary expenses of the Board, and the residue shall be expended by the Commissioners toward improving the navigation of the port or harbor where such fines and forfeitures are inflicted.

Fees for
serving sub-
poenas, etc.

Appeal from
judgment of
Commiss-
sioners, etc.

Commis-
sioners to
take testi-
mony, etc.

Fines and
forfeitures—
how dispos-
ed of.

Article 1.—Pilotage.

§ 1541. No person shall receive a certificate to act as pilot until he shall have served two full years in a decked boat, and have given satisfactory evidence of character and skill; and every certified pilot shall serve eighteen months before he shall be entitled to an increased authority; but, in case of emergency, such additional pilots may be appointed as the Mayor or other chief officer of the port may determine—the foregoing restrictions to the contrary notwithstanding.

Pilots—
when to re-
ceive certifi-
cate.

§ 1542. All branch pilots must be appointed by the Commissioners, and whenever a vacancy occurs in a branch, the person who has served the longest time as an apprentice must, if deemed competent by the Commissioners, be appointed to the vacancy; but no person can hold a branch who is not engaged in pilotage.

Branch pi-
lots—how
appointed.

§ 1543. If any master of a vessel, or water-craft of any description, shall throw, or permit to be thrown from on board such vessel or water-craft, into any of the waters of any bay or harbor of this State, or within three miles of the outside bar of any such bay or harbor, any stone, gravel, or other ballast, he shall forfeit a sum not less than five hundred nor more than two thousand dollars for any such offense, and may be imprisoned not exceeding three months, at the discretion of the Court—one half the forfeiture to be paid to any one first giving information of the offense to the Commissioners, and the other half to the use of the Commissioners of said harbors respectively, for improvement of navigation.

Penalty for
discharg-
ing ballast
in harbor.

§ 1544. Upon the Commissioners receiving satisfactory evidence of the offense specified in the preceding Section, it shall be their duty to proceed to recover such forfeiture by process of attachment, in the name of the State, which may be issued, as other attachments, on the oath of the informer, or of one of the Commissioners, and be levied on the vessel from which the offense was committed. The vessel may be replevied by the master, owner, or consignee, by giving bond, payable to the State, in double the amount of the penalty, with the condition to have the vessel forthcoming to satisfy such judgment as may be rendered in the suit.

Proceeding
for violat-
ing preced-
ing Section.

§ 1545. It shall be the duty of every pilot, having knowledge of the commission of the offense specified in the two preceding Sections, to give, as soon as practicable thereafter, information thereof to the Commissioners; and, failing to do so, such pilot

Penalty
against pilot
for conceal-
ing such of-
fense.

Article 1.—Pilotage.

shall be deprived of his license, and be thereafter forever disqualified for the office of pilot.

§ 1546. The City Council of Savannah shall have authority to prohibit, under proper penalties, the throwing or depositing in the Savannah River, and within the jurisdictional limits of said city, of any substance of any nature or kind which might, in any degree, lessen the depth of water in said river, or any part thereof, within said limits; and the same authority is hereby vested in the corporate authorities of the other towns respectively, as to navigable waters within their respective jurisdictions.

§ 1547. The same Boards of Commissioners are hereby authorized, in their own names, or in that of their Chairman, respectively, as such, to sue for and recover, to their own use and the improvement of navigation, any forfeiture which may accrue under this Chapter which is not otherwise specifically appropriated.

§ 1548. All existing appointments of Commissioners of Pilotage, and of officers under the same, as well as their rules and regulations not contrary to law at the time of the adoption of this Code, shall continue good and valid in law, according to their nature and terms, until superseded by authority of this Code.

ARTICLE II.

SEAMEN.

- SECTION.
1549. Defaulting seamen—how punished.
1550. Proceedings against deserters.
1551. Seamen not to be credited.
1552. Sale of liquors to seamen.
1553. Certificate of discharge.
1554. Shipping an articulated seamen.

- SECTION.
1555. Penalty for such shipping, etc.
1556. Boarding vessel to abduct seamen.
1557. Abducting seamen.
1558. Harboring deserted seamen.
1559. Illegal arrest of seamen.

§ 1549. Any seaman having entered or shipped himself on board any vessel within this State, or which shall come to the same, and having signed a contract with the master or commander thereof to proceed upon any voyage therein mentioned, who shall absent himself from any such ship or vessel for twenty-four hours without leave of said master or commander, or other chief officer having command of such vessel, or who shall neglect or refuse to perform his duty on board the same, or refuse to proceed on the

Article 2.—Seamen.

voyage mentioned in such contract, may be apprehended on warrant from any Justice of the Peace within his jurisdiction, upon application being made to him by such master or commander under oath, and upon proof of such absence without leave, or of such neglect or refusal as aforesaid, he may be committed to jail, or other secure place, for any time not exceeding thirty days, or until the sailing of such vessel, and the charge of apprehending, committing, and maintaining such seaman during his confinement as aforesaid, shall be paid by the complainant, and by him be deducted out of the wages due, or to be due, such seaman; but no seaman shall be received by the jailer until security shall have been given for the maintenance and jail fees of such seaman.

§ 1550. The Judge of the Superior Court, or Judge of any City Court, or a Justice of the Inferior Court, or Justice of the Peace of the County, or any similar officer of any seaport or County, on oath made before him that an articulated seaman or apprentice has deserted or absconded from a vessel, describing said seaman and vessel, and that he is harbored or secreted by some person (describing him) in a certain place (describing it), may issue his warrant, directed to any lawful officer of the County, authorizing a search for and seizure of such person in the place designated, and to fully execute such warrant. Any person resisting such search or seizure may be fined and imprisoned at the discretion of any Court having jurisdiction.

Proceedings against seamen and apprentices.

§ 1551. It shall not be lawful for any person to give credit to any seaman belonging to any vessel within this State, having signed any contract to proceed therein, for any sum exceeding one dollar, except by leave of the master or commander of such vessel, on pain of forfeiture of the moneys or goods so credited.

Credit not to be given to seamen.

§ 1552. It shall not be lawful for any keeper of a tavern or tippling house, or any other person selling intoxicating or spirituous liquors, to sell any such liquors to any seaman belonging to any vessel, and who may have signed any contract, to the amount of more than thirty cents in any one day, or to entertain or suffer any such seamen to drink in such tavern or tippling house, or furnish such seamen with liquor after the hour of nine o'clock at night, unless with the consent of the master or commander of such vessel; and any person offending against any of these provisions may, on conviction, be fined in a sum not exceeding fifty

Entertaining or furnishing seamen with spirituous liquors prohibited.

Article 2.—Seamen.

dollars, or be imprisoned in the common jail for not more than thirty days.

§ 1553. Any seaman whose contract with any master or commander of any vessel within the State, for the performance of any voyage therein specified shall be determined, may demand from him a certificate thereof, and of his discharge, and on refusing to give such certificate, without just cause, any two Justices of the Peace, upon due application and proof thereof, may give the same, which shall be of equal force as if given by such master or commander, who shall be liable, civilly, to pay one dollar for such certificate so given by such Justices, and shall, moreover, on conviction before any Court of competent jurisdiction, be liable to a fine of fifty dollars for such refusal.

§ 1554. No master or commander of any vessel, or other person within this State, shall hire, receive, entertain, or ship, any seaman belonging to and pretending to be discharged from any vessel, without a certificate of discharge being in possession of such seaman, under the penalty of fifty dollars for every such offense; and the same penalty may be inflicted on any person keeping or attending any ferry within this State, who shall willfully transport, or suffer to be transported over such ferry, any fugitive seaman not having a certificate of discharge as aforesaid.

§ 1555. If any sailor boarding-house keeper, a runner, or shipping master, or other person, shall hire, receive, or entertain, or ship, any seaman belonging to or pretending to be discharged from any vessel, without a certificate of discharge being in possession of said seaman, or shall aid or be concerned in any manner in the shipping, or offering to ship, such seaman, the person thus offending shall be fined and imprisoned at the discretion of the Court. Any order given by such seaman for advance wages shall be void.

§ 1556. If any person shall board any vessel in any port or harbor, or on any of the waters of this State, with intent to inveigle, entice, convey away, abduct, with or without violence, or secretly carry off, any article seaman or apprentice from such vessel, or shall afford any conveyance or facility to such seaman or apprentice to leave such vessel, such person so offending shall be liable to indictment, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the Court.

Seamen
may de-
mand certifi-
cate of dis-
charge.

Hiring, re-
ceiving, en-
tertaining
or shipping
seamen pro-
hibited.

Penalty for
hiring, re-
ceiving, or
entertaining
seamen con-
trary to law.

Boarding
vessel for
the purpose
of abduct-
ing — how
punished.

Article 2.—Seamen.

§ 1557. If any person shall aid any articted seaman or apprentice to desert from his vessel while within the waters of this State, or shall inveigle, entice, convey away, abduct, or carry, with or without violence, or secretly carry off, any articted seaman or apprentice from any such vessel, such person so offending shall be liable to indictment, and, on conviction, shall be liable to fine or imprisonment, or both, at the discretion of the Court.

Aiding
seamen or
apprentices
to escape—
how pun-
ished.

§ 1558. If any person shall harbor, secrete, entertain, lodge, or keep, or shall, directly or indirectly, suffer to be harbored, se-creted, entertained, lodged, or kept, in or about his house or premises, any articted seaman or apprentice, knowing such seaman or apprentice to have deserted from his vessel, such person shall be liable to indictment, and, on conviction, be fined in a sum of not more than five hundred dollars, or imprisoned, or both fined and imprisoned, at the discretion of the Court.

Harboring
seamen or
apprentices.

§ 1559. The law in respect to the vexatious arrest and detention of seamen, and to summary trial of causes, civil and criminal, in which seamen and the captains and consignees of vessels may be concerned, shall be as is provided in this Code; but if any provision in this Code contained shall conflict with the Code of the City of Savannah, appended hereunto, the said Code of Savannah shall prevail within the corporate limits of said city.

Vexatious
arrest and
detention of
seamen.

Code.

CHAPTER IV.

INSPECTION.

ARTICLE 1.—*Flour, Corn Meal, and Grain.*

ARTICLE 2.—*Wood, Turpentine, Timber, etc.*

ARTICLE I.

FLOUR, CORN MEAL, AND GRAIN.

SECTION.

- 1560. Inspectors—by whom appointed.
- 1561. Bolted flour shall be merchantable.
- 1562. Flour barrels—dimensions, etc.
- 1563. Flour shall be inspected—when.
- 1564. Fraudulently packing flour.

SECTION.

- 1565. Inspector can not purchase.
- 1566. Selling without inspection.
- 1567. Inspector's oath.
- 1568. Corn meal, corn, and other grain.

Article 1.—Flour, Corn Meal, and Grain.

§ 1560. The Inferior Courts in the several Counties of this State shall have power to appoint, annually, one person of good Inspectors by whom appointed. repute to be inspector of flour in their respective Counties, but the same power may be exercised exclusively in any corporate towns within their corporate limits; vacancies in such office of inspector may be filled by the appointing power as soon as may be after the happening of any vacancy.

§ 1561. All bolted wheat flour, and every cask thereof, brought to the places aforesaid for sale, shall be made, by the miller or manufacturer thereof, merchantable and of due fineness, and without Bolted flour shall be merchantable. mixture of coarse flour, or the flour of any other grain than wheat.

§ 1562. All flour barrels packed for sale shall be well made, and of good material, twenty-seven inches in length, tightened with at least ten hoops, and sufficiently nailed, with the tare plainly marked on the head thereof, and every miller or bolter shall put into a barrel the full quantity of 196 pounds of flour, and shall put into every half barrel the quantity of 98 pounds of flour, and on failure thereof shall forfeit and pay the sum of four dollars for each barrel or bag, to be recovered by any informer before any Justice having jurisdiction thereof—one-half thereof to go to the informer and the other half to the County or corporation having the appointment of inspector. our barrels—how made and they must contain.

§ 1563. All barrels, half barrels, and bags of flour brought to any place of inspection for sale shall be submitted to the view and examination of the inspector, who shall expeditiously inspect the same by boring into the barrel, half barrel, or bag, from head to head, or end to end, with an instrument of not more than three-fourths of an inch in diameter, to be by him provided for that purpose, and if he shall judge the same well packed and merchantable, he shall plug the hole and brand the barrel, half barrel, or bag with the name of the place at which he shall be inspector, with a public brand, or mark, to be by him provided for that purpose, and approved by the Inferior Court, City Council, or corporation, as the case may be, and shall also mark the degree of fineness which he shall determine the flour to be on inspection, which degrees shall be distinguished as follows: "Extra Family," "Superfine," "Fine," "Middling," "First," or "Second," for which trouble the inspector shall receive from the owner or consignee at the rate of five cents per barrel. Flour shall be submitted for inspection—when.

Fees for inspection.

Article 1.—Flour, Corn Meal, and Grain.

§ 1564. If any person shall pack flour in an old barrel which may have been marked and branded as aforesaid, and which shall still have the brand of the inspector thereon, or shall otherwise fraudulently pack flour for sale, such person or persons shall forfeit and pay the sum of twenty dollars for every barrel so packed, to be recovered by any informer before any Justice of the Peace, or other Court having jurisdiction thereof—one-half of such penalty to go to the informer, and the other half to the miller or manufacturer injured by such false packing.

Fraudulently packing flour.

§ 1565. No inspector shall be permitted, directly or indirectly, to purchase any flour by him condemned as unmerchantable, or any other flour whatever, other than for his own or family use and consumption, under the penalty of thirty dollars for every barrel by him purchased, to be recovered by any informer before any Justice of the Peace, or other Court having jurisdiction—one-half of which shall belong to the informer, and the other half to the County or corporation having the appointment of the inspector.

Inspector can not purchase except for his own use.

§ 1566. Any person who shall sell flour in or from any of the places where there is an inspector without an inspection as aforesaid, shall forfeit and pay the sum of ten dollars for each barrel, half barrel, or bag so sold, to be recovered by any informer before any Justice of the Peace, or other Court having jurisdiction—one-half to go to the informer and the other half to the inspector.

Penalty for selling without inspection.

§ 1567. Every inspector, before entering on the duties of his office, shall take and subscribe an oath or affirmation before the Clerk of the Council, or Clerk of the Inferior Court, of which a minute shall be made, that he will faithfully perform the duties of his office, inspect all flour offered to him for inspection, and faithfully brand and mark the barrels or bags, as by law directed. Inspectors shall be liable to indictment for any neglect of duty, and upon conviction thereof shall forfeit and pay a sum of not less than thirty dollars.

Inspector's oath.

§ 1568. It shall be the duty of every inspector of flour to inspect Indian corn and corn meal, wheat, and other grain in bags or in barrels, when requested by the owner or consignee to do so, and he shall brand only such as he may deem to be sound and merchantable, for which his compensation shall be three cents per bag or barrel, to be paid by the owner or consignee, as aforesaid.

Corn meal, corn, and other grain, to be inspected.

Article 2.—Wood, Timber, Turpentine, Tobacco, Guano, etc.

ARTICLE II.

WOOD, TIMBER, TURPENTINE, TOBACCO, GUANO, ETC.

SECTION.

1569. Inspectors and rules of inspection.
 1570. Drifted timber—selling of.
 1571. Penalty for buying the same.
 1572. Pitch, tar, etc., to be inspected.

SECTION.

1573. Turpentine barrels—dimensions of.
 1574. How marked.
 1575. Corporate authorities—powers of.

Inspectors
may be ap-
pointed for
any article
usually in-
spected.

§ 1569. Inspectors may be appointed, their duties prescribed, their fees fixed, and inspection and marking regulations adopted, by the corporate authorities of any city, for the inspection of guano and other fertilizers, tobacco, salt, pitch, tar, turpentine, rosin, fish, oil, staves, shingles, timber, wood, lumber, and liquor, and such other articles and things as are usually the subjects of inspection and measurements, and for measuring and gauging the said articles, or any of them, within the limits of said cities; and the same power may be exercised by the Inferior Court of every County, outside the limits of such town, and within the limits of such County; *provided*, such regulations be not inconsistent with the following provisions:

Appointees
only shall in-
spect.

1. No person shall be permitted to inspect, measure, or gauge, except such as may be regularly appointed, under a penalty of five hundred dollars for every offense, one-half to go to the informer, and the other half to the incorporation or Court having the appointment of inspectors. Every person so appointed shall be required to take an oath or affirmation faithfully to perform the duties of the office to the best of his skill and ability, and shall, moreover, give bond and security for the faithful discharge of the duties thereof. All vacancies may be filled by the appointing power.

Oath and
bond of in-
spectors.

Inspection
and meas-
urement of
lumber.

2. In all seaport towns, where timber or lumber is brought for exportation, or otherwise, the same shall be inspected and measured, and bills for such measurement shall be made out in superficial measurement.

Inspector
shall not be
clerk, etc.,
of lumber
mill or buy-
er.

3. No lumber or timber inspector, or measurer, shall, during his term of office, be or become the clerk or agent of any lumber or timber buyer, or the clerk or agent of lumber mill, on pain of forfeiture of his office on conviction, and fine or imprisonment, at the discretion of any Court having jurisdiction.

4. All square timber shall be measured as follows: The length shall be counted from pin-holes, and the size from the middle of

Article 2.—Wood, Timber, Turpentine, Tobacco, Guano, etc.

the stick, taking the smallest side and the face, throwing off fractions, and allowing one-half of the wainedge on the size and face, and other flatted timber, usually known as saw or mill logs, shall be measured one-third from the smallest end. Square
lumber—
how meas-
ured.

5. All sticks which are rotten, hollow, split, or broken, shall be declared refuse by the inspector, and the seller shall only be allowed one-half the measurement; but if the defect be at or near the end, only so much as is defective shall be declared refuse. Refuse lum-
ber.

6. The hook to the dip-rod shall not be less than one inch and three-quarters long. Length of
hook to dip
rod.

7. Ranging timber, scantlings, and boards, shall be deemed merchantable only when they shall have square edges, and be sound, and without decay; nevertheless, if any scantling or board to be measured and inspected shall be split, decayed, or fractured, more than two feet and less than six feet from the end thereof, such split, decayed, or fractured part shall be left out and not counted in the measurement. Ranging
timber, etc.
--when mer-
chantable.

8. Heading shall be two and a half feet long, six inches broad, one inch thick on one edge, and not less than three-quarters of an inch on the other edge, sound and free from decay, worm or knot holes; shingles to be twenty-two inches long, not less than three and a half inches wide, a half inch thick at the thick end, not decayed, and free from worm or knot holes. Length
and quality
of heading
and shingles

9. Pipe, hogshead, and barrel staves shall be considered merchantable only when conditioned as follows: Pipe staves to be at least fifty-four inches in length, three inches in breadth, and one inch thick on the thin edge, sound and free from worm or knot holes; hogshead staves to be forty-two inches long; three inches broad, and not less than three-quarters of an inch thick on the edges, sound and free from worm or knot holes; barrel staves to be two and a half feet long, three inches wide, and not less than three quarters of an inch on their edges, sound and free from worm or knot holes. Pipe, hogs-
head, and
barrel staves
--when mer-
chantable.

10. [If any inspector or measurer of timber shall fail, neglect, or refuse to measure timber as is now prescribed by law, the said inspector or measurer shall be guilty of misdemeanor, and, on conviction, be subject to a fine of five hundred dollars and imprisonment in the common jail of the County for the term of three months.] (a) Illegal in-
spection or
measure-
ment or re-
fusel.

(a) Acts of 1866, p. 26.

Article 2.—Wood, Timber, Turpentine, Tobacco, Guano, etc.

11. Every cord of fire wood shall measure eight feet in length, What is a cord of fire-wood, etc. four in breadth, and four in height. Any person to whom such wood is offered for sale, who may suspect any deficiency, shall have the right to have the same measured and corded by any sworn inspector or measurer of the place, and in case of any deficiency appearing, the seller shall, besides paying the fees of the inspector, make good the deficiency without delay, or forfeit, before any Court having jurisdiction, the sum of two dollars for every cord so deficient: Fees of inspector — by whom paid. in case of no deficiency appearing, the fees of the inspector or measurer shall be paid by the buyer. The corporate authorities of any town or city may make such Power of corporate authorities, etc. further regulations on this subject as to them shall appear proper to insure the objects of this Section.

§ 1570. No raftman or other person shall dispose, or attempt to dispose, of any drifted timber or lumber taken up by him Penalty for disposing of drifted timber. within this State, on pain of paying not exceeding five hundred dollars for every such offense, to be recovered in any Court having jurisdiction of the same—one-half of the penalty to go to the informer, and the other to the use of the County wherein such offense may be committed—or the offender may be imprisoned not more than six months; but nothing herein contained shall prevent the finder of drifted timber or lumber from requiring and receiving from the owner reasonable compensation for delivering to the owner such drifted timber or lumber.

§ 1571. Any person detected in purchasing drifted timber or Illegal purchase of drifted timber. lumber as aforesaid, except from factors or timber cutters, shall be liable, on conviction, to pay a fine of fifty dollars for every offense, or to be imprisoned for a term not exceeding six months.

§ 1572. No person shall ship, or put on board any vessel for exportation, from this State, any pitch, tar, rosin, or turpentine, Pitch, tar, etc., to be inspected before it is shipped. before the same is inspected and marked, *provided* there be at the port of exportation a sworn inspector of such articles, on pain of forfeiting one dollar for every barrel so shipped—one-half to go to the informer, and the other half to the use of the town or place of exportation. The true contents and quality of every barrel of such articles must be branded on the barrel.

§ 1573. Every barrel of soft turpentine shall be formed of good Quality etc., of turpentine barrels. and sufficient staves, three-quarters of an inch thick, not exceeding five inches wide, not less than thirty, nor more than thirty-two inches long; the head not less than one, nor more than one

Article 3.—Inspection of Liquors.

and a half inch thick, and the barrel secured with twelve good hoops. If the turpentine be fraudulently mixed, it shall be condemned by the inspector and delivered to the owner.

§ 1574. Each barrel of soft turpentine, after inspection, if found in conformity to the foregoing provisions, shall be branded or marked by the inspector as follows: The pure or virgin turpentine with the letter "V," the yellow dip "S," the hard "H."

Barrels of
turpentine—
how marked

§ 1575. The corporate authorities of any seaport town may make such further regulations for inspection of rosin, pitch, tar, and turpentine, and for the discovery of fraud in making and vending said articles, as to said authorities, respectively, shall seem proper.

Powers
of corporate
authorities.

ARTICLE III.

INSPECTION OF LIQUORS.

SECTION.

- 1576. Inspectors of, etc.—how appointed.
- 1577. Duties of such inspectors.
- 1578. Damaged liquors.
- 1579. Evading inspection of liquors.

SECTION.

- 1580. Fees of inspector.
- 1581. Manufacturing drugged liquors.
- 1582. Monthly inspections required.
- 1583. Selling liquors without inspection.

§ 1576. It shall be lawful for the several city and incorporated town authorities in this State to elect or appoint an inspector of liquors, spirits and wines, and vinegar, within their respective jurisdictions, and the Inferior Court of the several Counties shall have the same authority of appointment within the several Counties out of the jurisdiction of the city authorities.

Inspectors
of liquors,
etc. — how
appointed.

§ 1577. Such inspector, after being duly appointed as aforesaid, and sworn by the Clerk of the Council, or Clerk of the Inferior Court, faithfully to discharge the duties of inspector, shall examine and inspect all liquors, spirits and wines, or vinegar, kept by any person within the jurisdiction of such inspector, for sale in any quantities, and if, upon such inspection, any such shall be found to contain any strychnine or other poisonous drug or drugs, or offensive matter injurious to health by drinking or other use, such inspector shall immediately give notice thereof to the owner, who shall immediately destroy the same in the presence of the inspector, or give bond and security to return the same to the person from whom he purchased without the limits of this State.

Oath and
duty of such
inspector.

§ 1578. Any person who shall sell, or offer to sell, any liquor,

Article 3.—Inspection of Liquors.

Penalty for selling drugged liquors. wine, or spirits, or vinegar, knowing the same to be so drugged, or after notice as aforesaid shall be given, shall be indicted in the Superior Court of the County where such offense may be committed, and on conviction thereof, shall be fined, for the first offense, one hundred dollars; for the second offense, two hundred dollars; for the third offense, four hundred dollars; and for the fourth offense, one thousand dollars, and in each case be imprisoned until such fine be paid.

Penalty for evading inspection of liquors. § 1579. If any person shall refuse, or in any way prevent such inspector from making such examination and inspection, after a second demand made by such inspector, such person shall, upon indictment and conviction thereof, be fined and punished as in the immediate preceding Section; *provided*, the inspector shall make the second demand in the presence of a competent witness and prove the same by said witness on the trial.

Fees of liquor inspector. § 1580. Such inspector shall receive, unless other rates are prescribed by the authorities appointing him, from the owner of said liquor, wine, or spirits, or vinegar, for every ten gallons so inspected, five cents; for twenty gallons, ten cents; for forty gallons, fifteen cents; for eighty gallons, twenty cents; for one hundred and sixty gallons, twenty-five cents; and at the same rates and proportions upward for any number of gallons so inspected, and he shall, if required, give a receipt and certificate therefor, and shall brand the barrels, kegs, or pipes when the means are provided by the owners therefor, and he shall also receive one-half of all fine moneys arising under conviction, which shall by no means disqualify him from being a witness for the State in cases of prosecution under any of the foregoing Sections.

Penalty for manufacturing drugged liquors. § 1581. If any person shall manufacture any drugged, poisonous or other deleterious and offensive liquors, wine, or spirits, or vinegar; or adulterate any liquor, wine, or spirits, or vinegar, with poisonous material, such person so offending shall be indicted in the Superior Court of the County where the offense may be committed for a misdemeanor, and on conviction therefor, shall be fined and imprisoned in the common jail at the discretion of the Court.

Inspection to be monthly. § 1582. Such inspection shall be performed once a month, or whenever called on so to do by seller or buyer. When by the latter, he pays the fees.

§ 1583. When an inspector is appointed in any city or town,

Chapter 5.—Weights and Measures.

and due notice given of such appointment, any vender of liquors, in any quantity, who shall offer the same for sale before or without inspection, or a *bona fide* effort to have the same inspected, shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the Court.

Penalty for
selling li-
quors with-
out inspec-
tion.

CHAPTER V.

WEIGHTS AND MEASURES.

SECTION.

- 1584. Seal or stamp for weights, etc.
- 1585. Weights, etc., must be marked.
- 1586. Selling by deficient weights, etc.

SECTION.

- 1587. Standard of weights, etc.
- 1588. Clerk of I. C. to give notice.

§ 1584. The Justices of the Inferior Court must procure for their respective Counties a marking instrument, seal, or stamp, for the purpose of marking all weights and measures which the Clerk of the Inferior Court may find not to weigh or measure less than the standard established by the Congress of the United States, which is the standard of this State.

Seal or
stamp for
marking
weights and
measures.

§ 1585. All persons engaged in selling by weights and measures shall apply to the Clerk of the Inferior Court of their respective Counties, and have their weights and measures so marked, and in default thereof shall not collect any account, note, or other writings, the consideration of which is any commodity sold by their weights or measures.

Vendors
must have
weights and
measures
marked.

§ 1586. Any citizen may complain to the Clerk of the Inferior Court of the deficiency of any weights and measures, whether marked or not, and when done, it is the duty of said Clerk to notify the person complained of, and give him the name of the complainant, and specify a day, not more than ten days distant, when he shall submit his weights and measures to the test of the Justices of the Inferior Court, and if the complaint is found to be true, within the seller's knowledge, he shall be deemed a person selling by false weights and measures, and shall be presented by the Grand Jury as such, if no person appears and indicts.

Selling by
deficient
weights or
measures —
how punish-
ed.

§ 1587. The Governor shall procure standards of weights and measures for each County which does not have them, and they, together with the marks provided by the Inferior Court, shall be kept in the office of their Clerk for the inspection of the citizens.

Standards of
weights and
measures to
be procured.

Article 1.—Cotton, Rice, etc.

§ 1588. When such standards are obtained, it is the duty of such Clerk to give sixty days' written notice thereof at the door of the Court House, and in the public gazette where the Sheriff of the County advertises his sales.

CHAPTER VI.

REGULATIONS FOR PARTICULAR BRANCHES OF TRADE AND AGRICULTURE.

- ARTICLE 1.—*Cotton, Rice, etc.*
- ARTICLE 2.—*Cultivation of Rice.*
- ARTICLE 3.—*Oysters, Turtles.*
- ARTICLE 4.—*Fishing.*
- ARTICLE 5.—*Boats and Crews.*
- ARTICLE 6.—*Peddlers.*

ARTICLE I.

COTTON, RICE, ETC.

SECTION.

- 1589. Sale of cotton and other produce.
- 1590. Purchaser failing to pay.
- 1591. Acceptor of draft failing to pay.
- 1592. Shall not be convicted—when.
- 1593. Evidence of receipt of cotton, etc.
- 1594. Copartners—when liable.

SECTION.

- 1595. Oath, etc.
- 1596. Weighing without oath, etc.
- 1597. Tare on rice.
- 1598. Tare on other articles.
- 1599. No deduction to be made.
- 1600. Weighing—how regulated.

§ 1589. Cotton, corn, rice, or other products sold by planters and commission merchants on cash sale, shall not be considered as the property of the buyer, or the ownership given up, until the same shall be fully paid for, although it may have been delivered into the possession of the buyer.

§ 1590. Any person engaged in the business of buying such commodities, either on his own account or for others, who shall buy such on sale from a planter or commission merchant for cash, and shall fail or refuse to pay for the same, and shall make way with or dispose of the same before he shall have paid therefor, shall be deemed guilty of fraud and embezzlement, and shall be liable, on conviction, to be imprisoned in the Penitentiary for a

Article 1.—Cotton, Rice, etc.

term not less than one year, nor more than five years, at the discretion of the Court.

§ 1591. [If any person shall accept in writing any bill of exchange or draft, drawn upon him, in the body of which bill or draft shall be specified the amount for which it is drawn, and the time when it is payable, and that it is drawn against certain bales of cotton, enumerating them and referring to their marks on the margin, and that the same were sent to the drawee of said bill or draft, subject to the payment of said bill or draft to the payee or his order, to whom the title to said cotton was conveyed, and after such acceptance, shall fail or refuse to pay to such payee or his order, when the bill or draft shall fall due, the full amount of the proceeds of the sale of said cotton, if sold by such acceptor, or shall fail or refuse to deliver to the payee, or his order, the bales of cotton specified in said bill or draft, when demanded, after non-payment of said bill or draft, then such acceptor shall be guilty of a high misdemeanor, and, on conviction, shall be punished by confinement in the Penitentiary for not less than one, nor more than five years, at the discretion of the Court.] (a)

Penalty for failing to pay accepted draft or bill of exchange

§ 1592. [No person shall be convicted under the provisions of the preceding Section, if he can show that the cotton received by him was destroyed by accident, or that he was fraudulently or forcibly deprived of the possession thereof, or of the value of the same after it was sold.] (a)

Not to be convicted — when.

§ 1593. [The acceptance in writing of the bills of exchange or drafts, specified in Section 1591, shall be held as *prima facie* evidence of the value of the receipt by the acceptor of the cotton specified therein, and *prima facie* evidence of the value being the amount specified in the bill or draft.] (a)

Acceptance *prima facie* evidence.

§ 1594. [If such bill or draft shall be drawn on, and accepted by a mercantile copartnership in the name of the firm, each of the copartners shall be held *prima facie* liable to all the provisions of the three preceding Sections.] (a)

Copartners — when liable.

§ 1595. It shall not be lawful for any salesman, or other person, in any of the cities, towns, or villages of this State, or at any railroad station or depot, to weigh any bale, bag, or package of cotton, tierce or half tierce of rice, or any other article of produce disposed of by weight, without first taking and subscribing

Oath of one weighing cotton and rice.

Article 1.—Cotton, Rice, etc.

an oath before some person authorized by law to administer it, that he will justly, impartially, and without deduction, weigh all such produce, and all other articles of produce disposed of by weight that may be shown to him for that purpose, and tender a true account thereof to the party or parties concerned, if so required. The weigher may, nevertheless, make such deductions for wet or other cause which may be reasonable, when the seller or his agent shall thereto consent, and for such tare as may by law be allowed; but no tare shall ever be allowed on bales of unmanufactured cotton, except the usual deduction of two pounds from the weight of every bag of cotton having knobs or tugs thereon.

Oath to be recorded, and penalty for weighing without oath § 1596. Such oath, when taken, must be filed in the Clerk's office of the Inferior Court of the County, and a minute made thereof; and if any person weighs such produce without having taken and filed such oath, he and the factor, or person who may employ him, are liable each twenty dollars for every bag of cotton, five dollars for every tierce of rice, twenty-five cents for every bushel of corn, and one-third the value of any other product so weighed—one-half to go to the informer, the other half to the Educational Fund of the County.

Tare on rice. § 1597. The tare to be allowed on rice shall be the actual tare, as nearly as can be determined, except in cases of the sale of a single tierce, half tierce, or barrel, where a tare of ten per centum shall be allowed, unless otherwise agreed on, between the buyer and seller.

Tare on other articles. § 1598. In other cases where tare is usually allowed, the actual tare, as nearly as the same can be ascertained, shall be allowed, except where the seller and purchaser may expressly agree upon a different rule.

No deduction to be made for turn of scales, etc. § 1599. It shall not be lawful for any purchaser or weigher to make any deduction from the weight of any article for or on account of the draft or turn of the scales or steelyard, under a penalty, for every such offense, of five hundred dollars, to be recovered in any court having jurisdiction, one-half to go to the informer, by whom the suit may be brought, and the other half to the use of the County where the offense may be committed.

§ 1600. The corporate authorities of all cities and towns may make such further regulations for the weighing of produce of all descriptions, including fees for weighing, as in their judgment

Article 2.—Cultivation of Rice.

may tend to effect the objects of the foregoing provisions, and the Inferior Courts of the respective Counties shall have the same power, to be exercised outside the jurisdictions of said incorporated cities or towns; but, until altered by such authorities or Courts, fees for weighing shall be such as are now fixed by law.

Corporate
authorities,
etc., may
regulate
weighing.

ARTICLE II.

CULTIVATION OF RICE.

SECTION.

- 1601. Water shall not be diverted.
- 1602. Rice dams—when to be opened.
- 1603. Penalty for obstructing.
- 1604. Persons injured—how redressed.
- 1605. Proceedings for redress.
- 1606. Award of freeholders.

SECTION.

- 1607. Person may drain his own land.
- 1608. Proceedings in case of obstruction.
- 1609. Dam not to be stopped—when.
- 1610. Inadequate dams.
- 1611. Compensation of freeholders.

§ 1601. No person shall be permitted to make or keep up any dam to stop the natural course of any water, so as to overflow the lands of any other person, without his consent, nor shall any person stop or prevent any water from running off of any person's field, whereby such person may be prevented from planting in season, or receive any other injury thereby, nor so as to turn the natural course of any water from one channel or swamp to another, to the prejudice of any person. [And whenever the owner of any land in this State shall refuse to extend any drain or ditch through the same, that may be dug to the line of his lot by the owner or occupant of adjoining land, then the said adjoining owner or occupant shall be privileged to extend his drain at his own expense through any such lands to a proper outlet; and if his land shall be injured or decreased in value by reason of said draining, then the party injured shall receive full compensation from the person so draining, for the injury done. The question of such injury in value may be submitted, on request of either party and notice given, to three disinterested freeholders, to be chosen by the Inferior Court of said County, and they shall make an award upon the same rules and regulations as are now provided by law touching arbitration and awards; *provided*, said award shall be made and just compensation paid before the drain or ditch is commenced.] (a)

Water not
to be divert-
ed.

Drain may
be continu-
ed.

§ 1602. Every person who shall keep water during the winter

Article 2.—Cultivation of Rice.

Rice dams upon grounds where rice will be planted the ensuing spring, shall
 —when to annually, by the fifth day of March, open the dams which keep
 be opened. up the water, and let off the same.

§ 1603. Upon the violation of the provisions of either of the
 preceding Sections, the person offending forfeits five hundred dol-
 Penalty for lars upon the complaint of any person interested; one-half of the
 violating the two preced- recovery goes to the informer, the other to the Educational Fund
 ing Sections. of the County.

§ 1604. When any person has thus offended in the manner
 aforesaid, a person affected thereby may apply to a magistrate
 Person in- who has jurisdiction in the district for a warrant of survey, and
 jured may shall also, thereupon, notify the defendant of the complaint, and
 apply for of the time and place of meeting.
 warrant of survey.

§ 1605. The magistrate shall have summoned three disinterested
 freeholders of the neighborhood or district where the cause of
 Proceed- complaint exists, one of whom must be chosen by each of the
 ings under parties and the other by the magistrate; but if the defendant
 the warrant. neglects before the day of meeting to make a choice, the magis-
 trate may choose for him; they must be sworn before such magis-
 trate, to determine the matter in dispute justly and impartially;
 shall proceed to view the obstruction, and are empowered to do so
 without the attendance of either party, unless such are providen-
 tially prevented, and must report their proceedings to the magis-
 trate without delay.

§ 1606. If, on view thereof, a majority of said freeholders decide
 that said obstructions do or may prevent the party complaining
 Award of from planting his crop of rice in due time, or otherwise injure
 freeholders. him, they shall furnish an immediate remedy in any way they
 think necessary to give the most effectual relief, the losing party
 paying the costs of the proceeding.

§ 1607. Such proceeding does not apply to any person who shall
 have made through his own land sufficient drainage, of which said
 Drainage freeholder shall be the judge, to carry off the waters passing through
 not herein the same, in as expeditious a manner as they could have passed
 prohibited. through the natural course or channels if no such banks had been
 erected.

§ 1608. Any person between said fifth of March and the first
 day of September of each year may apply in like manner for a
 Proceed- warrant of survey on any obstructions which may impede the
 ings in case of any ob- conveying of any surplus water on his rice grounds, and which by

Article 2.—Cultivation of Rice.

remaining thereon may prove injurious, or shall keep up any dam which shall stop the water so as to overflow his lands to his injury. In such cases the proceedings are the same as heretofore set forth.

§ 1609. If any person shall, by himself, or through his orders, or by his agent, stop up any dam or replace any obstruction which has been opened or removed, or which has been thus done by himself on the said fifth of March until the first day of July next thereafter, or shall obstruct or hinder the opening of any dam or removing of obstructions decided to be opened or removed, he forfeits, as aforesaid in this Chapter, one thousand dollars for each offense to the person aggrieved, besides his liability for the actual damages. Penalty for stopping up dam when opened by authority.

§ 1610. When any dam has been made to form reservoirs of water without sufficient waste-way, and is inadequate to sustain the weight of water, the owner of such dam shall immediately cause the same to be enlarged, strengthened, or erected in a substantial manner, with a sufficient waste-way. If, on a survey by freeholders, he neglects to make the improvements they require, within the time they may designate, he shall forfeit to any person injured, or liable to be injured, as last aforesaid. Inadequate dams to be enlarged.

§ 1611. The freeholders are entitled each to three dollars per day, and if duly summoned and they fail to attend, without providential cause or necessary absence from the district, they forfeit to either party one hundred dollars. The magistrate and witnesses, if any, receive the costs allowed in the trial of forcible entries and detainers. Compensation of freeholders, etc.

ARTICLE III.

OYSTERS, TURTLES, ETC.

SECTION.

- 1612. Oysters—manner of taking.
- 1613. Violating preceding Section.
- 1614. Planted oyster-beds protected.

SECTION.

- 1615. Exclusive right of land-owner.
- 1616. Turtles—when to be taken.
- 1617. Violating three preceding Sections.

§ 1612. It shall not be lawful to take or catch any oysters in any of the waters of this State with or by a scoop, rake, drag, or dredge, or by the use of any other instrument than the oyster tongs heretofore in general use for taking oysters, and every person taking oysters, in violation of law, shall forfeit such sum for every offense as the Court having jurisdiction may determine, and Oysters—in what manner taken.

Article 3.—Oysters, Turtles, etc.

shall forfeit to the State the boat or vessel employed in such unlawful business, her tackle, apparel, and furniture.

Proceed-
ings against
violation of
preceding
Section.
§ 1613. On complaint made upon oath before any Judge or Justice of this State, in any County where the offense may be committed, of the violation of the provisions of the foregoing Section, such officer shall issue his warrant for the arrest of the offender, and shall commit or let to bail, according to law, and in such warrant, authority shall be given for the arrest of every such boat; and such boat, her tackle, apparel, and furniture shall not be released, except upon bond, with good security, for the forthcoming of such vessel and appurtenances to answer any judgment of forfeiture. In case such boat and appurtenances be not replevied within one month after arrest, the same may be sold by order of such Judge or Justice, and the proceeds shall be paid into the office of the Superior Court of the County, there to await the order of said Court.

Planted
oyster beds
protected.
§ 1614. Where any person having taxable lands upon the banks or shores of any of the rivers or creeks of this State shall plant beds of oysters upon them, it shall not be lawful for any other person to take from such beds of oysters; *provided*, the same shall be distinctly staked or otherwise marked.

Exclusive
right of cer-
tain land-
owners to
oyster beds.
§ 1615. When oyster banks, or beds of oysters, or natural formation, be within rivers or creeks of this State, not exceeding one hundred and twenty feet in width, and not used for purposes of navigation, the persons having the ownership of the lands upon both sides of such creeks or rivers shall have the exclusive right to the usufruct of such banks or beds of oysters as aforesaid.

Turtles—
when to be
taken.
§ 1616. It shall not be lawful to take terrapins and turtles within tide-water at any time other than from the first day of May to the first day of September.

Violation
of the three
preceding
Sections—
how punish-
ed.
§ 1617. For any violation of the three preceding Sections the offender shall be subject to a penalty of not less than fifty nor more than five hundred dollars.

ARTICLE IV.

FISHING.

SECTION.

1618. Fishing regulated.

1619. Violating preceding Section.

SECTION.

1620. Vessels engaged in fishing.

§ 1618. It shall not be lawful for any person to inhabit, occupy

Article 4.—Fishing.

or reside in any vessel, ark, or flat on any river of this State which shall not be engaged in the lawful commerce of the same, in the carriage or transportation of goods or produce to or from market, unless owned by the proprietors of the shores, or their lessees; *provided*, nothing contained in this and the previous Section shall be construed to prevent the owners of the land on said rivers, or their lessees, from taking fish in the river opposite their banks; but no seine shall be permitted to be used in said rivers, either by such owners or their lessees, from sunset on Saturday to sunrise on Monday; *and provided, also*, that every lease or license to fish shall be recorded within ten days after the granting thereof in the Clerk's office of the Superior Court of the County where the land lies.

Fishing regulated.

§ 1619. Every offense against any of the foregoing provisions shall be punished by a fine not exceeding two hundred dollars, to be applied to educational purposes.

Penalty for violating the preceding Section.

§ 1620. It shall be lawful for all civil officers, at all times, to visit and search all vessels, covered flats, or arks, and boats engaged in fishing, or trading illegally on any river of this State, and to cause offenders, therein found, against any of the laws of this State to be committed or bound over to answer for offenses against such laws.

Officers may visit and search vessels, etc.

ARTICLE V.

BOATS AND CREWS.

SECTION.

1621. Bills of lading must be granted.
1622. Penalty for refusing such bills.

SECTION.

1623. Traffic with hands, etc., prohibited.
1624. Shipping of articles prohibited.

§ 1621. It shall be the duty of all owners or agents of boats employed in the navigation of the navigable waters of this State, to grant to each and every boat, respectively, previously to its departure from the wharf or landing, a certificate or bill of lading, showing its destination, contents, and the name of its captain or patroon, and consignee, which certificate or bill of lading shall at all times be subject to the examination of any free white person requiring the same.

Owners of boats may grant bill of lading, etc.

§ 1622. Any such owner or agent neglecting or refusing to furnish certificate or bill of lading, and any such captain or patroon

Article 5.—Boats and Crews.

Penalty for refusing to exhibit the same on demand as aforesaid, may be severally indicted, and for every offense, be fined in a sum not exceeding fifty dollars—one-half the penalty in such case to go to the informer, and the other half to the use of the County where such conviction takes place.

§ 1623. It shall not be lawful for any owner, captain, or patroon of a boat, navigating any of the navigable rivers of this State, to suffer or permit any boat hand to put on board such boat, any corn, cotton, rice, stock, poultry, or other articles that may by law be prohibited, as an article of traffic to such boat hand, as the property of such boat hand, nor shall such owner or patroon suffer the boat hands on board such boat to barter or trade the one with the other, in any such article or articles of produce under any pretext whatever, under penalty of fine and imprisonment at the discretion of the Court, on conviction of the party for violating any of the foregoing provisions.

§ 1624. No owner, captain, or patroon of such boat, shall permit any such boat hand to take with him any such articles, unless the same shall be stated in such certificate or bill of lading, and such articles shall be immediately under the direction of such owner, captain, or patroon, or the agent of the owner, under penalty of fine and imprisonment, at the discretion of the Court for every offense against any of said provisions.

ARTICLE VI.

PEDDLERS.

SECTION.

- 1625. License to peddle—how obtained.
- 1626. License—when unnecessary.
- 1627. Goods not to be sold by sample.
- 1628. Qualification, etc., of peddler.

SECTION.

- 1629. Each vehicle must be licensed.
- 1630. License—power of J. I. C. to grant.
- 1631. Citizens only can obtain a license.
- 1632. Indictment and trial.

§ 1625. Every peddler or itinerant trader, by sample or otherwise, in any article not manufactured in this State, must apply to the Clerk of the Inferior Court of each County where he may desire to trade, for a license, which shall be granted to him on the terms the Justices of the Inferior Court have or may impose. If they have made no rule, such Clerk shall immediately inform such Justices. They are authorized to impose such tax as they may deem advisable; *provided*, it is not less than fifty dollars, to be

Article 6.—Peddlers.

used for County purposes. The license extends only to the limits of the County.

§ 1626. None of the provisions of this Article shall extend to Exceptions. persons selling the agricultural products of any State, nor to persons selling agricultural implements.

§ 1627. A person not a citizen of this State shall not sell any Goods not to be sold by sample. article not manufactured in this State by sample.

§ 1628. The peddler shall furnish said Clerk with evidence of his good character, and shall take and subscribe before him this Qualifications and oath of peddler. oath: "I swear that I will use this license in no other County than the one for which it is granted, nor suffer any person to use it in my name, and that I am a citizen of this State. So help me God." Said oath and license must be entered in the book kept for that purpose, and the license must contain a description of the person of the peddler.

§ 1629. There shall be separate licenses for every wagon, cart, Must be a license for each vehicle or other vehicle (or each horse, if the peddling is done on horseback), employed or used in vending such goods, wares, or merchandise, which shall be shown to any officer, civil or military, demanding it, and on failure or refusal so to exhibit, the peddler forfeits five hundred dollars, to be recovered on suit of the informer—one-half to go to the informer, the other to the Educational Fund of the County.

§ 1630. The Justices are authorized to grant licenses to peddle Authority of J. I. C. to indigent and infirm persons upon such terms as they in their discretion may impose.

§ 1631. A foreigner not a citizen shall not be granted license Foreigners may not be licensed. to peddle, unless he shall have declared his intention to become a citizen, and he shall swear to such fact, instead of that he is a citizen.

§ 1632. On the trial of a foreigner for illegal peddling, whether In indictments the onus is on defendant etc. with or without license, the State is only required to prove the peddling, and the foreigner must show, in defense, his eligibility.

TITLE XVII.

SALARIES AND FEES OF OFFICERS.

CHAPTER I.

OFFICERS CONNECTED WITH THE EXECUTIVE DEPARTMENT.

SECTION.
1633. Salaries appropriated.
1634. Salaries of Executive officers.

SECTION.
1635. Pay of those without fixed salaries.

§ 1633. [The various sums of the annual salaries of all the officers of this State, whose salaries are fixed by law, are hereby appropriated annually to pay said officers, until they are altered by law.] (a)

§ 1634. The salaries per annum of such officers, respectively, are as follows :

Salaries of
Executive
officers.

[The Governor.....	\$4000 00
The Governor's Secretaries, each.....	1800 00
The Governor's Messenger.....	950 00
The Comptroller General.....	2000 00
The Clerk of the Comptroller General.....	1600 00
The State Treasurer.....	2000 00
The Secretary of State.....	2000 00
The Clerk of the State Treasurer.....	1600 00
The State Librarian.....	1200 00](b)

§ 1635. All persons employed by the Governor for whom no compensation is prescribed are paid, according to his discretion, out of the money appropriated therefor. If no money is thus appropriated, and the employment is indispensable, he has the privilege to pay them out of the contingent fund.

Pay of of-
ficers whose
salaries are
not fixed.

(a) Acts of 1865-6, pp. 11, 12. (b) Acts of 1865-6, p. 16.

CHAPTER II.

OTHER OFFICERS APPOINTED BY THE GOVERNOR.

SECTION.

1636. Pay of officers appointed, etc.

SECTION.

1637. Governor may fix pay, etc.

§ 1636. The salaries per annum of such officers, respectively, Pay of officers appointed by Governor.
are as follows :

The Trustees of the Lunatic Asylum, each.....	\$ 100 00
[The Principal Keeper of the Penitentiary.....	2000 00
The Assistant Keeper of the Penitentiary.....	1200 00
The Book-keeper and Salesman of the Penitentiary.....	1200 00](a)
The Tanner of the Penitentiary.....	1200 00
The Overseer of the Penitentiary.....	800 00
The Physician of the Penitentiary....	500 00
The Chaplain of the Penitentiary.....	150 00
The Military Store-keeper at Savannah.....	300 00
The Military Store-keeper at Milledgeville.....	150 00

§ 1637. If the Governor establishes other places of keeping Governor may fix the pay of certain officers.
the military stores of the State, he may regulate the salaries of
all the keepers thereof, so that the compensation will be in proportion to their respective duties and responsibilities, which, when done, shall be reported to the General Assembly.

CHAPTER III.

OFFICERS APPOINTED BY THE TRUSTEES OF CERTAIN INSTITUTIONS,
WHO ARE PAID IN WHOLE, OR IN PART, FROM THE STATE TREASURY
OR OUT OF STATE APPROPRIATIONS.

SECTION 1638. Salary of officers of Asylum, etc.

§ 1638. The salaries, per annum, of such officers, respectively, Salary of officers of the Asylum, etc.
are as follows :

The Superintendent and Principal Physician of the Lunatic Asylum.....	\$2500 00
The Assistant Physician.....	1250 00 *
The Superintendent of the Georgia Military Institute.....	2500 00

(a) Acts of 1865-6, p. 16. * See second paragraph of Section 1368.

Chapter 4.—Officers connected with the Legislative Department.

CHAPTER IV.

OFFICERS CONNECTED WITH THE LEGISLATIVE DEPARTMENT.

SECTION 1639. Salary and fees of Legislative officers.

§ 1639. The salaries, per session, of the officers connected with said department, who receive such, and which are embraced in the appropriation for the pay of officers and members of the General Assembly, are—

Salaries and fees of Legislative officers.

The Secretary of the Senate.....	\$500 00
The Clerk of the House of Representatives.....	500 00
The fees of said officers are—	
For every extract of a private nature, per copy sheet.....	15
For certifying an extract of a private nature.....	50
For certifying an act for the benefit of an individual, or corporation, or society.....	3 00

CHAPTER V.

OFFICERS CONNECTED WITH THE JUDICIAL DEPARTMENT.

SECTION.	SECTION.
1640. Salaries of Judges and Sols. General.	1643. Fees of Sol. Gen'l Supreme Court.
1641. Certificate of service.	1644. Fees in certain cases.
1642. Fees of Attorney General.	

§ 1640. The salaries, per annum, of such officers, are as follows:

Salaries of Judges and Solicitors General.

The Judges of the Supreme Court, each.....	\$3500 00
The Reporter of the Supreme Court.....	1000 00
The Judges of the Superior Court, each.....	2500 00
[The Solicitors General of the several Circuits, each.....	300 00] (a)

The fees of such officers are as follows:

1. Solicitor General—

Fees of Solicitor General.

For each person prosecuted to conviction for a capital offense,	50 00
For each person prosecuted [to trial or plea of guilty] (b) for any other felony, and for any violation of the laws against gambling.....	25 00

(a) Acts of 1865–6, p. 250. (b) Acts of 1866, p. 21.

Chapter 5.—Officers connected with the Judicial Department.

For each person indicted or presented.....	\$ 5 00
For each proceeding to enforce a recognizance.....	5 00
For every amount collected on such proceedings, five per cent.	
For every proceeding instituted to forfeit a charter.....	100 00
For services in the Supreme Court—	
First—In capital cases.....	50 00
Second—Other felonies....	30 00
Third—All other cases.....	15 00
Fourth—For litigated recognizance, double fees and commissions.	
For drawing a <i>capias</i> against a person indicted or presented and not bound over.....	50
For drawing a <i>capias</i> against each defaulting juror.....	50
For entering a <i>nolle prosequi</i>	25
For attending at Judge's Chamber to take the affidavit of any person in criminal cases.....	1 00
For drawing an affidavit, or any instrument of writing, per copy sheet.....	10
[For a peace warrant tried or disposed of by the Court.....	5 00] (a)
For plain collections for the State, five per cent.	
For litigated collections for the State, 10 per cent.	
For services in cases not mentioned, where the State is an interested party, at the discretion of the Governor, not exceeding	50 00
[For every bill of indictment ignored by the Grand Jury, to be paid by the prosecutor and received as in cases of malicious prosecution.....	5 00] (b)

§ 1641. They shall not be paid fees for litigation without the certificate of the presiding Judge that they are properly and faithfully claimed as such, nor on any bill for any species of gaming, where the same is entered *nol. pros*. Certificate of services. Cases in which no fee is allowed,

§ 1642. The Solicitor General, who, by virtue of his office, is Attorney General, has the following fees: Fees of Attorney General.

For every written opinion he is legally required to make.....	25 00
For prosecuting a Solicitor General, the payment of his necessary expenses, and.....	50 00
For services in any case where the State has an interest, and his services are required, the payment of his necessary expenses, and.....	50 00
For suits for and collection of money, on account of the State, out of his circuit, when litigated, ten per cent. upon amount collected, and five per cent. if not collected; if not litigated, fees of Solicitor General.	
For any service performed, for which a fee is not prescribed, the Governor may pay him what he deems reasonable and just, and report the same to the General Assembly.	

(a) Acts of 1859, p. 17. (b) Acts of 1866, page 21.

Chapter 5.—Officers connected with the Judicial Department.

Fees of Solicitor in Supreme Court

§ 1643. The fees of the Solicitors, for services rendered in the Supreme Court, shall be paid by the State, on the warrant of the Governor, in all cases when the Solicitor shall present the certificate of the Clerk of the Supreme Court, as to services, and of the Clerk of the Superior Court to the fact that the defendant was acquitted, or was unable to pay the costs.

§ 1644. [The fees allowed to Solicitors for the prosecution in the Superior Court of the crimes which were reduced below felonies by the act of the 20th March, 1866, shall remain the same as they were before said crimes were so reduced; and the fees in the County Court shall be the same as those herein provided for.] (a)

a) Acts 1866, p. 153.

PART II.

THE CIVIL CODE.

TITLE I.

OF PERSONS.

CHAPTER 1.—*Different kinds of Persons—their Rights and Status.*
CHAPTER 2.—*Of Domicil, and the Manner of Changing the same.*

CHAPTER I.

DIFFERENT KINDS OF PERSONS—THEIR RIGHTS AND STATUS.

ARTICLE 1.—*Of Citizens.*
ARTICLE 2.—*Of Residents and Aliens.*
ARTICLE 3.—*Of Persons of Color.*
ARTICLE 4.—*Of Corporations.*

ARTICLE I.

OF CITIZENS.

SECTION.

1645. Natural and artificial persons.
1646. Division of natural persons.
1647. Citizens.
1648. Rights of citizens.
1649. Exercise thereof.

SECTION.

1650. Females.
1651. Minors.
1652. Disqualification from crime.
1653. Insane persons.

§ 1645. Persons are either natural or artificial. The latter are the creatures of the law, and except so far as the law forbids it, subject to be changed, modified, or destroyed, at the will of their creator: they are called corporations.

Natural
and artificial
persons.

Article 1.—Citizens.

§ 1646. Natural persons are distinguished according to their rights and status into—1st, citizens; 2d, residents not citizens; 3d, aliens; 4th, persons of color.

Division
of natural
persons.

§ 1647. The persons to whom belong the rights of citizenship and the mode of acquiring and losing the same, have been specified in a former Article.

Citizens.

§ 1648. Among the rights of citizens are the enjoyment of personal security, of personal liberty, private property and the disposition thereof, the elective franchise, the right to hold office, to appeal to the Courts, to testify as a witness, to perform any civil function, and to keep and bear arms.

Rights of.

§ 1649. All citizens are entitled to exercise all their rights as such, unless specially prohibited by law.

Exercise
thereof.

§ 1650. Females are not entitled to the privilege of the elective franchise, nor can they hold any civil office or perform any civil functions unless specially authorized by law, nor are they required to discharge any military, jury, police, patrol, or road duty.

Females.

§ 1651. The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors, and are for that disability unable to exercise these rights of citizens.

Minors.

§ 1652. Citizens under conviction by a Court of this State for a felony are incapable of exercising the elective franchise pending the execution of their sentence; and all persons, citizens or otherwise, convicted of perjury, false swearing, or forgery, shall be incapable of testifying as a witness pending the execution of their sentence.

Disqualifi-
cation from
crime.

§ 1653. All persons *non compos mentis*, either from birth or from subsequent causes, constantly or periodically, or from age, infirmity, drunkenness, or otherwise incapable of managing their affairs, have their persons and estates, or either of them, placed in the control of guardians. Such persons retain all the rights of citizens which they have the capacity to enjoy, and which are compatible with their situation.

Insane per-
sons.

Article 2.—Residents and Aliens.

ARTICLE II.

OF RESIDENTS AND ALIENS.

SECTION.

1654. Rights of citizens of U. S.

1655. Aliens.

1656. Rights of aliens as to realty.

1657. Rights to sue and testify.

SECTION.

1658. Liens.

1659. Privileges of certain Frenchmen.

1660. Militia duty.

§ 1654. Such citizens of the other States of this Union as are ^{Rights of citizens of U. S.} recognized as citizens of the United States by the Constitution thereof, shall be entitled, while residents of this State, to all the rights of citizens thereof, except the elective franchise and the right to hold office, and to perform such civil functions as are confined by law to citizens of this State.

§ 1655. Aliens are the subjects of foreign governments not naturalized under the laws of the United States. ^{Aliens.}

§ 1656. Aliens, the subjects of governments at peace with the United States and this State, so long as their governments remain at peace, shall be entitled to all the rights of citizens of other States resident in this State, and shall have the privilege of pur-^{Rights of aliens as to realty.}
chasing, holding, and conveying real estate in this State.

§ 1657. The citizens of other States of the United States, or of ^{Rights to sue and testify.} foreign States at peace with this State, and friendly Indians, shall by comity be allowed the privilege of suing in our Courts or giving evidence therein, so long as the same comity is extended in their Courts to the citizens of this State.

§ 1658. Aliens may receive and enforce liens by mortgage or otherwise on real estate in this State. ^{Liens.}

§ 1659. In accordance with the recommendation of the Congress of the United States expressed in the resolution passed on 14th January, A.D. 1780, the citizens of the French Government shall continue to have the privilege of disposing of and settling their estates within this State, as provided in the Act of this State, approved February 22d, A.D. 1785. ^{Privileges of certain Frenchmen.}

§ 1660. Residents not citizens and resident aliens shall not be ^{Militia duty.} liable to militia duty, except in so far as repelling local invasions or suppressing insurrections.

Article 3.—Persons of Color.

ARTICLE III.

OF PERSONS OF COLOR.

SECTION.

1661. Who are.
 1662. Rights of persons of color.
 1663. May testify.
 1664. May file affidavits.
 1665. Husband and wife.

SECTION.

1666. Marriage ceremony.
 1667. Obligation of parent.
 1668. Obligation of children.
 1669. Children—when legitimate.

Who are
persons of
color.

§ 1661. [All negroes, mulattoes, mestizoes, and their descendants, having one-eighth negro or African blood in their veins, shall be known in this State as persons of color.] (a)

Their rights,
etc.

§ 1662. [Persons of color shall have the right to make and enforce contracts, to sue and be sued, to be parties and give evidence, to inherit, to purchase, lease, sell, hold, and convey real and personal property, and to have full and equal benefit of all laws and proceedings for the security of person and estate, and shall not be subjected to any other or different punishment, pain or penalty for the commission of any act or offense than such as are prescribed for white persons committing like acts or offenses.] (a)

When com-
petent wit-
nesses.

§ 1663. [Persons of color shall be competent witnesses in all the Courts of this State in civil cases whereto a person of color is a party, and in all criminal cases wherein a person of color is defendant, or wherein the offense charged is a crime or misdemeanor against the person or property of a person of color.] (a)

May file
affidavit—
when.

§ 1664. [In all cases now pending, or that may be hereafter instituted in any of the Courts of this State, wherein a person of color is a party, plaintiff or defendant, it shall be competent for such person of color to make and file any affidavit now by law allowed a citizen, to advance the remedy or aid the defense, and when so made and filed, in conformity with law, such action shall be had thereon as though the said affidavit had been made and filed by any other litigant.] (a)

Husband
and wife—
when.

§ 1665. [Persons of color living together on the 9th day of March, 1866, as husband and wife, are hereby declared to sustain that legal relation to each other, unless a man shall have two or more reputed wives, or a woman two or more reputed husbands. In such event, the man shall immediately select one of his re-

Article 3.—Persons of Color.

puted wives, with her consent, or the woman one of her reputed husbands, with his consent, and the ceremony of marriage between these two shall be performed. If such man, thus living with more than one woman, or such woman living with more than one man, shall fail or refuse to comply with the provisions of this Section, he or she shall be prosecuted for the offense of fornication, or fornication or adultery, or fornication and adultery, and punished accordingly.] (a)

Adultery,
etc. — how
committed.

§ 1666. [It shall be lawful for ordained colored ministers of the Gospel, or ministers of the Gospel of African descent, to celebrate marriage between freedmen and freedwomen, or persons of African descent, only, under the same terms and regulations as are now required by the laws of the State for marriages between free white citizens of this State.] (b)

Who may
perform
marriage ce-
remony.

§ 1667. [Among persons of color the parent shall be required to maintain his or her children, whether legitimate or illegitimate.] (a)

Parents
shall main-
tain chil-
dren.

§ 1668. [Children shall be subjected to the same obligations in relation to their parents as those which exist in relation to white persons, and in all cases when the parents have separated and the children remain with the mother, she shall have control of such children during their minority.] (c)

Obligations
of children.

§ 1669. [Every colored child born before the 9th day of March, 1866, is hereby declared to be the legitimate child of his mother; but such child is the legitimate child of his colored father only when born within what was regarded as a state of wedlock, or when the parents were living together as husband and wife.] (d)

Child legiti-
mate—when

ARTICLE IV.

OF CORPORATIONS.

SECTION 1.—*Their Nature and Kinds.*

SECTION 2.—*Their Creation.*

SECTION 3.—*Their Powers and Liabilities.*

SECTION 4.—*Their Dissolution.*

(a) Acts 1865-6, p. 239. (b) Acts of 1866, p. 156. (c) Acts of 1865-6, p. 240, and Acts of 1866, p. 157. (d) Acts of 1865-6, pp. 239-40, and Acts of 1866, pp. 156-7.

Section 1.—Their Nature and Kinds.

SECTION I.

THEIR NATURE AND KINDS.

SECTION.

1670. Definition.

1671. Public and private.

SECTION.

1672. Public.

1673. Private.

§ 1670. A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers and liabilities is fixed by the act of incorporation, usually called its charter.

Public or private.

§ 1671. Corporations are either public or private.

Public.

§ 1672. A public corporation is one having for its object the administration of a portion of the powers of government, delegated to it for that purpose: such are municipal corporations.

Private.

§ 1673. All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be, in its nature, civil, religious, or educational.

SECTION II.

THEIR CREATION.

SECTION.

1674. By whom created.

1675. Foreign corporations.

SECTION.

1676. Organization under order of Court.

By whom created.

§ 1674. The power to create corporations in this State vests in the General Assembly, and the Courts, by whom all charters must be granted.

Foreign corporations.

§ 1675. Corporations created by other States or foreign governments, are recognized in our Courts only by comity, and so long as the same comity is extended in their Courts to corporations created by this State.

Organization under order of Court.

§ 1676. A private corporation, for any purpose whatever, except banking or insurance, may be created in this State by complying with the following provisions:—

Petition.

1. [The persons desiring the charter shall file in the office of the Clerk of the Superior Court of the County in which they desire to transact business, a petition or declaration, specifying the objects of their association, and the particular business they propose to carry on, together with their corporate name, and

Section 2.—Their creation.

the amount of capital to be employed by them actually paid in, Corporate name and capital stock and their place of doing business, and the time not exceeding twenty years, for which they desire to be incorporated; which petition or declaration shall be recorded by said Clerk, and shall also be published once a week, for one month, in the nearest public gazette to the point where such business is located, before said Court Petition to be recorded and published. shall pass an order declaring said application granted.] (a)

2. If, upon hearing such petition, the Court shall be satisfied that the application is legitimately within the purview and intention of this Code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated for and during a term not exceeding twenty years, with the privilege of renewal at the expiration of that time, according to the provisions above set forth. A certified copy of this petition and order under the seal of the Court, shall be evidence of such incorporation in any Court in this State.

Order.

3. [No corporation created under this Article shall commence to exercise the privileges conferred by the charter, until ten per cent. of the capital stock is paid in, and no charter shall have any force or effect for a longer period than two years, unless the incorporators, within that time, shall in good faith commence to exercise the powers granted by the act of incorporation; and in case of the failure of said corporation, the stockholders shall be bound in their private capacity, to any creditor of said corporation, for the amount of stock subscribed for by him, until the said subscription is fully paid up, or until the stockholder shall have paid, out of his private property, debts of the said corporation to an amount equal to his unpaid subscription.] (a)

Ten per cent. must be paid in.

Individual liability.

4. The Clerk of the Court, for his services, shall receive the usual fees allowed for similar services in other cases.

Fees.

5. Corporations thus created may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract or purchase, or hold any property of any kind, except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company.

Powers.

(a) Acts of 1865-6, pp. 27-8.

Section 3.—The Powers and Liabilities of Corporations.

SECTION III.

THE POWERS AND LIABILITIES OF CORPORATIONS.

SECTION.

1677. Continuance.

1678. Common powers.

SECTION.

1679. Responsibility for acts of officers.

Continuance § 1677. Corporations have continuous succession during the time limited by their charter, notwithstanding the death of their members. Should any charter granted in future by the General Assembly to a private corporation be silent as to its continuance, such charter shall expire at the end of thirty years from the date of its grant.

Common powers. § 1678. All corporations have the right to sue and be sued, to have and use a common seal, to make by-laws, binding on their own members, not inconsistent with the laws of this State and of the United States, to receive donations by gift or will, to purchase and hold such property, real or personal, as is necessary to the purpose of their organization, and to do all such acts as are necessary for the legitimate execution of this purpose.

Responsibility for acts of officers. § 1679. Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers, by reason of any by-law or other limitation upon the power of the officer, not known to such third person.

SECTION IV.

OF THE DISSOLUTION OF CORPORATIONS.

SECTION.

1680. Of public corporations.

1681. Private charters.

1682. Heretofore granted.

1683. How dissolved.

1684. How forfeited.

SECTION.

1685. Surrender.

1686. Death of members.

1687. Disposition of assets.

1688. Collateral liabilities.

Public corporations. § 1680. Public corporations being established for public purposes, are always subject to dissolution by the act of the General Assembly.

Section 4.—The Dissolution of Corporations.

§ 1681. In all cases of private charters hereafter granted, the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter. Private charters.

§ 1682. Private corporations heretofore created, without the reservation of the right of dissolution; and where individual rights have become vested, are not subject to dissolution at the will of the State. Heretofore granted.

§ 1683. Every corporation is dissolved—1st, by expiration of its charter; 2d, by forfeiture of its charter; 3d, by a surrender of its franchises; 4th, by the death of all its members without provision for a succession. How dissolved.

§ 1684. A corporation may forfeit its charter—1st, by a willful violation of any of the essential conditions on which it is granted; 2d, by a misuser or non-user of its franchises. This dissolution dates from the judgment of a Court of competent jurisdiction declaring the forfeiture. How forfeited.

§ 1685. A corporation may be dissolved by a voluntary surrender of its franchises to the State. In such case, such surrender does not relieve its officers or members from any liability for the debts of the corporation. Surrender.

§ 1686. The death of all the members of a corporation, or of so many of them as to render it impossible under the charter to provide a succession, is a dissolution thereof. Death of members.

§ 1687. Upon the dissolution of a corporation, for any cause, all of the property and assets of every description belonging to the corporation shall constitute a fund—first, for the payment of its debts, and then for equal distribution among its members. To this end the Superior Court of the County where such corporation was located shall have power to appoint a receiver, under proper restrictions, properly to administer such assets under its direction. Disposition of assets.

§ 1688. The dissolution of a corporation, from any cause, shall not, in any manner, affect any collateral or ultimate or other liability, legally incurred by any of its officers or members. Collateral liability.

CHAPTER II.

OF DOMICIL AND THE MANNER OF CHANGING THE SAME.

SECTION.

- 1689. General rule.
- 1690. Persons residing at two or more, etc.
- 1691. *Feme covert*.
- 1692. Of minor.

SECTION.

- 1693. Lunatics, etc.
- 1694. Change of domicil.
- 1695. Of persons not "*sui juris*."

Domicil. § 1689. The domicil of every person of full age, and laboring under no disability, is the place where the family of such person shall permanently reside, if in this State. If he has no family, or they do not reside in this State, then the place where such person shall generally lodge shall be considered his domicil.

Election of one of two. § 1690. If a person shall reside indifferently at two or more places in this State such person shall have the privilege of electing which shall be his domicil, and if such election be made notorious the place of his choice shall be his domicil. If no such election be made, or if made is not generally known among those with whom he transacts business in this State, third persons may treat either one of such places as his domicil, and it shall be so held: and in all cases a person who habitually resides a portion of the year in one County and another portion in another, shall be deemed a resident of both, so far as to subject him to suits in either for contracts made, or torts committed in such County.

Transient persons. Transient persons whose business or pleasure causes a frequent change of residence, and having no family permanently residing at one place in this State, shall be held and deemed as to third persons to be domiciled at such place as they at the time temporarily occupy.

Feme covert. § 1691. The domicil of a married woman shall be that of her husband, except in two cases: 1st, of voluntary separation and living apart; 2d, of a pending application for divorce. In which case her domicil shall be determined as if she were a *feme sole*.

Of minor. § 1692. The domicil of every minor shall be that of his father, if alive, unless such father has voluntarily relinquished his parental authority to some other person. In such event, the domicil of the minor shall be that of his master, if an apprentice, or his employer; if neither master or employer, then the place of his own choice; if the father be dead, then the domicil of the minor shall be that of his guardian, if he has one in this State; if no

Chapter 2.—Domicil and the Manner of Changing the same.

guardian, then of his mother, if alive; if no mother, then of his employer; if no employer, then of his own choice. The domicil of a bastard shall be that of his mother.

§ 1693. Persons of full age, who for any cause are placed under the power of a guardian, have the same domicil with the guardian. Lunatics.

§ 1694. The domicil of a person "*sui juris*," may be changed by an actual change of residence with the avowed intention of remaining. A declaration of an intention to change the domicil is ineffectual for that purpose until some act done in execution of the intention. Change of domicil.

§ 1695. A person whose domicil for any reason is dependent upon that of another can, by no act or volition of his, effect a change of his own domicil; nor can a guardian change the domicil of his ward by a change of his own or otherwise, so as to interfere with the rules of inheritance or succession, or otherwise affect the rights or interests of third persons. Of persons not "*sui juris*."

TITLE II.

OF THE DOMESTIC RELATIONS.

CHAPTER 1.—*Of Husband and Wife.*

CHAPTER 2.—*Of Parent and Child.*

CHAPTER 3.—*Of Guardian and Ward.*

CHAPTER 4.—*Of Master and Servant.*

CHAPTER I.

OF HUSBAND AND WIFE.

ARTICLE 1.—*Of Marriage and Divorce.*

ARTICLE 2.—*Of the Rights and Liabilities of Husband and Wife, etc.*

ARTICLE 3.—*Of Marriage Contracts and Settlements.*

Section 1.—Marriage—how and by whom contracted.

ARTICLE I.

OF MARRIAGE AND DIVORCE.

SECTION 1.—*Marriage—how and by whom contracted.*

SECTION 2.—*Divorces, and how obtained.*

SECTION 3.—*Of Alimony.*

SECTION I.

MARRIAGE—HOW AND BY WHOM CONTRACTED.

SECTION.

- 1696. Restraint of marriage.
- 1697. Essentials of marriage.
- 1698. Who is able to contract.
- 1699. Prohibited degrees.
- 1700. Consent.
- 1701. Void marriages.
- 1702. Licenses—how granted.

SECTION.

- 1703. Return of marriage by bans.
- 1704. Consent of parents.
- 1705. Penalty on persons officiating.
- 1706. Jewish marriages.
- 1707. Amalgamation prohibited.
- 1708. Want of authority in minister, etc.
- 1709. Marriage in another State.

§ 1696. Marriage is encouraged by the law, and every effort to ^{Restraints of marriage.} restrain or discourage marriage by contract, condition, limitation, or otherwise, is invalid and void. Prohibiting marriage to a particular person or persons, or before a certain reasonable age, or other prudential provision looking only to the interest of the person to be benefited, and not in general restraint of marriage, will be allowed and held valid.

§ 1697. To constitute a valid marriage in this State there must ^{Essentials of marriage.} be—

1. Parties able to contract.
2. An actual contract.
3. Consummation according to law.

§ 1698. To be able to contract marriage, a person must be of ^{Who is able to contract.} sound mind; if a male, at least seventeen years of age, and if a female at least fourteen years of age, and laboring under neither of the following disabilities—viz:

1. Previous marriage undissolved.
2. Nearness of relationship by blood or marriage, as hereinafter explained.
3. Impotency.

Section 1.—Marriage—how and by whom contracted.

§ 1699. Marriages between persons related by affinity in the following manner are prohibited—viz: A man shall not marry his step-mother, or mother-in-law, or widow of his uncle, or daughter-in-law, or step-daughter, or grand-daughter of his wife. A woman shall not marry her corresponding relatives. Marriages within the degrees prohibited by this Section are incestuous. Prohibited degrees.

§ 1700. To constitute an actual contract of marriage, the parties must be consenting thereto voluntarily, and without any fraud practiced upon either. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent, shall be held a fraud. Consent.

§ 1701. Marriages of persons unable to contract, or unwilling to contract, or fraudulently induced to contract, are void. The issue of such marriages, before they are annulled and declared void by a competent Court, are legitimate. In the latter two cases, however, a subsequent consent and ratification of the marriage, freely and voluntarily made, accompanied by cohabitation as husband and wife, shall render valid the marriage. Void marriages.
Issue.
Effect of ratification.

§ 1702. Marriage licenses shall be granted by the Ordinaries, or their deputies, of the several Counties where the female to be married resides, if resident in this State, directed to any Judge, Justice of the Inferior Court, Justice of the Peace, or Minister of the Gospel, authorizing the marriage of the persons therein named, and requiring such Judge, Justice, or Minister to return the said license to the Ordinary, with his certificate thereon as to the fact and date of the marriage, which license, with the return thereon, shall be recorded by the Ordinary, in a book kept by him for that purpose. Licenses—how granted
Return and record.

§ 1703. If any Judge, Justice, or Minister shall connect in marriage persons whose bans have been published, such Judge, Justice, or Minister shall certify the fact to the Ordinary of the County where such bans were published, who shall record the same in the same book with marriage licenses. Return of marriage bans.

§ 1704. It shall be the duty of the Ordinary and his deputy to inquire as to the ages of all persons for whom marriage licenses are asked, and if there be any ground of suspicion that the female is a minor under the age of eighteen years, such Ordinary and his deputy shall refuse to grant the license until the written consent of the parent or guardian, if any, controlling such minor shall be produced and filed in his office; and any Ordinary who, Consent of parents.

Section 1.—Marriage—how and by whom contracted.

Penalty on Ordinary.

by himself or deputy, shall knowingly grant such license without such consent, or without proper precaution, in inquiring as to the fact of minority, or for the marriage of a female to his knowledge domiciled in another County, shall forfeit the sum of five hundred dollars for every such act, to be recovered at the suit of the Clerk of the Superior Court, and added to the Educational Fund of the County.

Penalty on person officiating.

§ 1705. Any Judge, Justice, or Minister who shall join in marriage any couple without such license, or the publication of bans, shall forfeit the sum of five hundred dollars, to be recovered and appropriated as set forth in the foregoing Paragraph.

Jewish marriages.

§ 1706. Upon request, the Ordinary may direct the marriage license to any Jewish Minister, or other person of any religious society or sect, authorized by the rules of such society, to perform the marriage ceremony, who shall make return thereon as before required.

Amalgamation prohibited.

§ 1707. [The marriage relation between white persons and persons of African descent is forever prohibited, and such marriages shall be null and void.] (a)

Want of authority in Minister or J. P.

§ 1708. A marriage valid in other respects, and supposed by the parties to be valid, shall not be affected by a want of authority in the Minister or Justice to solemnize the same; nor shall such objection be heard from one party who has fraudulently induced the other to believe that the marriage was legal.

Marriage in another State.

§ 1709. All marriages solemnized in another State by parties intending at the time to reside in this State shall have the same legal consequences and effect as if solemnized in this State. Parties residing in this State can not evade any of the provisions of its laws as to marriage by going into another State for the solemnization of the marriage ceremony.*

(a) Constitution of 1865, Art. 5, Sec. 1, Par. 9.

* As to marriage of persons of color see Sections 1665 and 1666.

Section 2.—Divorces—how obtained.

SECTION II.

OF DIVORCES, AND HOW OBTAINED.

SECTION.

- 1710. Total and partial.
- 1711. Grounds for total divorce.
- 1712. Discretionary grounds.
- 1713. Grounds for partial divorce.
- 1714. Condonation, collusion, etc.
- 1715. Confessions of party.
- 1716. Proceedings.
- 1717. Respondent may ask divorce.
- 1718. Libellant shall not dismiss.
- 1719. Schedule.
- 1720. Transfer pending suit.

SECTION.

- 1721. Verdict of jury.
- 1722. New trials.
- 1723. Judgment or decree.
- 1724. Conscientious scruples.
- 1725. Effect of total divorce.
- 1726. Rights and disabilities.
- 1727. Effect of partial divorce.
- 1728. Custody of children.
- 1729. Renewal—cohabitation.
- 1730. *Ex parte* cases.

§ 1710. Divorces may be granted by the Superior Court, and shall be of two kinds—total, or from bed and board. The concurrent verdict of two special juries, at the same term or otherwise, shall be necessary to a total divorce; [and in case there be but one panel of Grand Jurors impaneled at the same term, it shall be lawful for the presiding Judge to have a second jury impaneled from said Grand Jury, composed of Grand Jurors summoned to the same term, and in the event of a deficiency, the same may be completed by tales jurors, under the direction of said Judge.] (a) A divorce from bed and board may be granted on the verdict of one special jury.

§ 1711. The following grounds shall be sufficient to authorize the granting of a total divorce:

1. Intermarriage by persons within the prohibited degrees of consanguinity and affinity.

2. Mental incapacity at the time of the marriage.

3. Impotency at the time of the marriage.

4. Forces, menaces, duress, or fraud, in obtaining the marriage.

5. Pregnancy of the wife, at the time of marriage, unknown to the husband.

6. Adultery in either of the parties after marriage.

7. Willful and continued desertion by either of the parties for the term of three years.

8. The conviction of either party for an offense involving moral turpitude, and under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer.

Section 2.—Divorces—how obtained.

§ 1712. In cases of cruel treatment or habitual intoxication by either party, the jury in their discretion may grant either a total or partial divorce.

Discretion-
ary grounds.

§ 1713. Divorces from bed and board may be granted on any ground which was held sufficient in the English Courts prior to 4th May, 1784.

Grounds
for partial
divorce.

§ 1714. If the adultery, desertion, cruel treatment, or intoxication complained of shall have been occasioned by the collusion of the parties, and with the intention of causing a divorce, or if the party complaining was consenting thereto, or if both parties have been guilty of like conduct, or if there has been a voluntary condonation and cohabitation subsequent to the acts complained of, and with notice thereof, then no divorce shall be granted; and in all cases, the party sued may plead in defense the conduct of the party suing, and the jury may, on an examination of the whole case, refuse a divorce.

Condonation,
collusion,
etc.

Discretion
of jury.

§ 1715. The confessions of a party to acts of adultery or cruel treatment, should be received with great caution, and if unsupported by corroborating circumstances, and made with a view to be evidence in the cause, should not be deemed sufficient to grant a divorce.

Confessions
of party.

§ 1716. The action for divorce shall be by petition and process, as in ordinary suits, filed and served as in other cases, unless the defendant be non-resident of this State, when service shall be perfected as prescribed in this Code in causes in equity. The same rules of pleading shall obtain as in other causes at law.

Proceedings.

§ 1717. [When a libel for divorce is instituted, the respondent may in his or her plea and answer recriminate, and ask a divorce in his or her favor; and if on the trial, the jury believe such party is entitled to divorce, instead of the libellant, they may so find upon legal proof, so as to avoid the necessity of a cross-action.] (a)

Respondent
may ask a di-
vorce, when.

§ 1718. [If one verdict is found in favor of the respondent, the libellant can not dismiss his or her suit, without the consent of the opposite party.] (a)

Libellant
can not dis-
miss--when.

§ 1719. In all suits for divorce, the party applying shall render a schedule, on oath, of the property owned or possessed by the parties at the time of the application—or at the time of separation, if the parties have separated—distinguishing the separate

Schedule.

Section 2.—Divorces—how obtained.

estate of the wife, if there be any, which shall be filed with the petition, or pending the suit, under the order of the Court. The jury rendering the final verdict in the cause may provide permanent alimony for the wife, either from the *corpus* of the estate or otherwise, according to the condition of the husband and the source from which the property came into the coverture. Disposition of property.

§ 1720. After a separation, no transfer by the husband of any of the property, except *bona fide*, in payment of pre-existing debts; shall pass the title so as to avoid the vesting thereof, according to the final verdict of the jury in the cause. Transfer pending suit

§ 1721. The verdict of the jury shall specify the kind of divorce granted, and the disposition to be made of the scheduled property. Verdict of jury.

§ 1722. New trials may be granted from verdicts on applications for divorce, as in other cases. New trials.

§ 1723. The verdicts of juries disposing of the property in divorce cases shall be carried into effect by the Courts, by entering up such judgment or decree, or taking such other steps usual in Chancery Courts as will effectually and fully execute the same. Judgment or decree.

§ 1724. A juror having conscientious scruples as to granting divorces, is incompetent to serve on such applications. At the request of the complainant the Court may inquire of the panel touching such scruples. Conscientious scruples.

§ 1725. A total divorce annuls the marriage from the time of its rendition, except it be for a cause rendering the marriage void originally, but in no case of divorce shall the issue be rendered bastards, except in cases of pregnancy of the wife at the time of the marriage. Effect of total divorce.

§ 1726. [In each divorce case, the Court shall regulate the rights and disabilities of the parties.] (a) Rights and disabilities--regulation of

§ 1727. A divorce from bed and board authorizes neither party to marry; and if a sufficient provision for the maintenance of the wife has been made by the verdict of the jury, the husband shall not be liable for her future support. The wife shall be a *feme sole* as to her earnings and property, as well as liberty, after a divorce from bed and board. Effect of partial divorce.

§ 1728. In all cases of divorce granted, the party not in default shall be entitled to the custody of the minor children of the marriage. Custody of children.

Section 2.—Divorces—how obtained.

riage. The Court, however, in the exercise of a sound discretion, may look into all the circumstances, and, after hearing both parties, make a different disposition of the children, withdrawing them from the custody of either or both parties, and placing them, if necessary, in the possession of guardians appointed by the Ordinary. The Court may exercise a similar discretion pending the libel for divorce.

§ 1729. Parties divorced from bed and board, on subsequent Renewed cohabitation reconciliation, may live together again as husband and wife, by first filing in the office of the Ordinary of the County where the divorce was granted, their written agreement to that effect, attested by the Ordinary.

§ 1730. In divorce cases proceeding *ex parte*, it is the duty of Ex parte cases. the Judge to see that the grounds are legal, and sustained by proof, or to appoint the Solicitor General, or some other attorney of the Court, to discharge that duty for him. +

SECTION III. *X Jan 21.*

OF ALIMONY.

SECTION.

- 1731. Permanent and temporary.
- 1732. Proceedings to obtain.
- 1733. Discretion of Judge.
- 1734. Revision and enforcement.
- 1735. Merits not in issue.
- 1736. Permanent alimony—when granted.

SECTION.

- 1737. Husband's voluntary deed.
- 1738. Decree in equity.
- 1739. Liability to third persons, etc.
- 1740. After alimony granted.
- 1741. Subsequent cohabitation.
- 1742. Interest of wife in husband's estate.

§ 1731. Alimony is an allowance out of the husband's estate, Permanent and temporary. made for the support of the wife, when living separate from him. It is either temporary or permanent.

§ 1732. Proceedings to obtain. Whenever an action for divorce, at the instance of either party, is pending, or a suit by the wife for permanent alimony, the wife may, at any regular term of the court in which the same is pending, apply to the presiding Judge, by petition, for an order granting to her temporary alimony pending the cause; and, after hearing both parties, and evidence as to all the circumstances of the parties and as to the fact of the marriage, the Court shall grant an order allowing such temporary alimony, including expenses of litigation, as the condition of the husband and the facts of the case may justify.

Section 3.—Alimony.

§ 1733. In arriving at the proper provision, the Judge shall consider the peculiar necessities of the wife, growing out of the pending litigation; he may also consider any evidence of a separate estate owned by the wife, and if such estate is ample, as compared with the husband's, temporary alimony may be refused.

Discretion of Judge.

§ 1734. The order allowing alimony shall be subject to revision by the Court at any time, and may be enforced either by writ of *fieri facias* or by attachment for contempt against the person of the husband. A failure to comply with the order shall not deprive the husband of his right either to prosecute or defend his cause.

Revision and enforcement.

§ 1735. On applications for temporary alimony, the merits of the cause are not in issue, though the Judge, in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary, and in his discretion may refuse it altogether.

Merits not in issue.

§ 1736. Permanent alimony is granted in the following cases: 1st, of divorce as considered in the former Section; 2d, in cases of voluntary separation; 3d, where the wife, against her will, is either abandoned or driven off by her husband.

Permanent alimony—when granted.

§ 1737. In either of the two latter cases the husband may voluntarily, by deed, make an adequate provision for the support and maintenance of his wife, consistent with his means and her former circumstances, which shall be a bar to her right to permanent alimony.

Husband's voluntary deed.

§ 1738. In the absence of such provision, on the application of the wife, a Court of Equity may, by decree, compel the husband to such provision for the support of the wife and such minor children as may be in her custody, as indicated in the foregoing Paragraph.

Decree in equity.

§ 1739. Until such provision is made, voluntarily, or by decree or order of the Court, the husband shall be liable to third persons for the board and support of the wife, and for all necessities furnished to her, or for the benefit of his children in her custody.

Liability to third person before, etc.

§ 1740. When permanent alimony is granted, the husband ceases to be liable for any debt or contract of the wife; on the other hand, he ceases to have any power to control her acquisitions by purchase, or descent, or gift, or otherwise; and the property of the husband set apart for the support of the wife is not subject to his debts or contracts so long as she lives.

After alimony granted.

Article 2.—The Rights and Liabilities of Husband and Wife, etc.

Subsequent co-habitations. § 1741. The subsequent voluntary cohabitation of the husband and wife shall annul and set aside all provision made, either by deed or decree, for permanent alimony. The rights of children under any deed of separation or voluntary provision for alimony shall not be affected thereby.

Interest of wife in husband's estate. § 1742. After permanent alimony granted, upon the death of the husband the wife is not entitled to any further interest in his estate in her right as wife, but such permanent provision shall be continued to her, or a portion of the estate equivalent thereto shall be set apart to her.

ARTICLE II.

OF THE RIGHTS AND LIABILITIES OF HUSBAND AND WIFE AND
HEREIN OF DOWER.

SECTION.

- 1743. Husband is head of family.
- 1744. Separate property of wife.
- 1745. Torts to wife.
- 1746. Acquisitions of wife.
- 1747. Agency of wife.
- 1748. Liability of husband for necessities.
- 1749. General agency of wife.
- 1750. Free trader.
- 1751. Husband sole heir.
- 1752. Wife—when sole heir.
- 1753. Dower.

SECTION.

- 1754. How barred.
- 1755. Election in case of bequests, etc.
- 1756. Election in ignorance.
- 1757. Dower in several tracts.
- 1758. Dwelling house.
- 1759. Lien no bar.
- 1760. Life estate in proceeds of sale.
- 1761. Or absolute estate in specified sum.
- 1762. Earnings of wife.
- 1763. Paraphernalia.
- 1764. Wife may appear against husband.

Husband is head of family. § 1743. In this State the husband is the head of the family, and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order.

Wife's property—when separate. § 1744. [All the property of the wife at the time of her marriage, whether real, personal, or choses in action, shall be and remain the separate property of the wife; and all property given to, inherited, or acquired by the wife during coverture shall vest in and belong to the wife, and shall not be liable for the payment of any debt, default, or contract of the husband.] (a)

Torts to wife § 1745. If a tort be committed upon the person or reputation of the wife, the husband may recover therefor; if, however, the wife is living separate from the husband she may sue for such torts,

Article 2.—The Rights and Liabilities of Husband and Wife, etc.

and also torts to her children, and recover the same to her use. In like manner, when separated from the husband, she may enforce contracts made in reference to her own acquisitions.

Of living separate from husband.

§ 1746. When living separate from her husband the acquisitions of a wife and of her children living with her, shall be vested in the wife for her separate use, free from the debts, contracts, or control of her husband, and at her death, intestate, the same shall descend to her children, and if none, to her next of kin.

Acquisitions of wife living separate from her husband.

§ 1747. The husband is bound to support and maintain his wife, and his consent shall be presumed to her agency in all purchases of necessaries suitable to her condition and habits of life, made for the use of herself and the family. This presumption may be rebutted by proof.

Agency of wife in respect to necessities.

§ 1748. The husband is bound for necessities furnished to the wife, when separated from him, subject to the limitations hereinbefore provided. If the wife be living in adultery with another man, the husband is not liable; but notice by the husband shall not relieve him from liability if his wife is separated from him by reason of his own misconduct; if she voluntarily abandons him without sufficient provocation, notice by the husband shall relieve him of all liability for necessities furnished to her.

Liability of husband for necessities.

§ 1749. The wife may act as attorney and agent for the husband, but, except in cases before mentioned, proof of such authority must be made as in other cases.

General agency of wife.

§ 1750. The wife, by consent of her husband, evidenced by notice in a public gazette for one month, may become a public or free trader; in which event she is liable as a *feme sole* for all her contracts, and may enforce the same in her own name. In such cases the acquisitions of the wife become her separate estate.

Free trader.

§ 1751. Upon the death of the wife the husband is her sole heir, and upon payment of her individual debts, if any, may take possession thereof without administration.

Husband sole heir.

§ 1752. Upon the death of the husband, without lineal descendants, the wife is his sole heir.

Wife—when sole heir.

§ 1753. Dower is the right of a wife to an estate for life in one-third of the lands, according to valuation, including the dwelling-house (which is not to be valued unless in a town or city) of which the husband was seized and possessed at the time of his death, or to which the husband obtained title in right of his wife.

Dower.

§ 1754. Dower may be barred—

fully discussed 389a 4,

Article 2.—The Rights and Liabilities of Husband and Wife, etc.

1. By provision made prior to the marriage and accepted by the
How barred. wife in lieu of dower.

2. By a provision made by deed or will, and accepted by the wife after the husband's death, expressly in lieu of dower, or where the intention of the husband is plain and manifest that it shall be in lieu of dower.

3. By the election of the widow within twelve months from the grant of letters testamentary, or of administration on the husband's estate, to take a child's part of the real estate in lieu of dower.

4. By a failure to apply for the dower for seven years from the death of the husband.

5. By the wife's deed with her husband to lands to which the title came through her.

6. By the adultery of the wife unpardoned by the husband.

§ 1755. If the husband by will gives to his wife an interest in his lands, her election of dower bars her of that devise, but does not deprive her of any interest in the personalty bequeathed to her in the will, unless it is expressed to be in lieu of dower.

Election in cases of bequest in lieu of dower.

§ 1756. An election by the widow to take a child's part of the realty in ignorance of the condition of the estate, or of any fact material to her interest, shall not bar her right to dower; *provided*, the rights of third persons acting *bona fide* upon her election shall not be disturbed or prejudiced.

Election in ignorance.

§ 1757. Where the husband dies seized of several distinct tracts of land lying in the same County, the widow may elect to take her entire dower in one body, and may select the tract or tracts out of which her dower shall be laid. If a tract or body of land is divided by County lines, the entire dower may be laid off in either County; if several tracts lie in different Counties, the dower must be applied for and laid out in each County.

Dower in several tracts.

If divided by County lines

§ 1758. The widow is entitled to the possession of the dwelling-house from the death of her husband, and before dower is assigned, and also of the furniture therein, until her portion thereof is set apart by the appraisers as provided by this Code.

Dwelling-house.

§ 1759. No lien created by the husband in his lifetime, though assented to by the wife, shall in any manner interfere with her right to dower.

Lien no bar.

§ 1760. With the assent of the executor or administrator of the estate, the widow may elect a life estate in one-third part of the

Article 2.—The Rights and Liabilities of Husband and Wife, etc.

proceeds of the sales of the land, or any distinct tract or tracts of land in lieu of the dower in such land. In which event, such third part of the proceeds of the sale shall be invested by the executor or administrator under the direction of the Ordinary where his returns are made, and the annual income thereof paid to the widow during her life.

Life estate
in proceeds
of sale.

§ 1761. With the assent of the executor or administrator of the estate, and the approval of the Ordinary, the widow may elect in lieu of her dower an amount in money to belong absolutely to her, to be estimated and determined by the commissioners appointed to assign dower, and whose report shall be subject to the same objections as are admeasurements of dower in land. Both before the Ordinary and on the return of the report of the commissioners, any person interested in the question shall be allowed to become a party and be heard. The amount so awarded shall be paid in preference to all other claims out of the proceeds of the sale of the land.

Absolute es-
tate in spec-
ified sum.

How con-
tested.

§ 1762. [Any married woman may deposit in any of the savings banks, or institutions for savings, now chartered in the State of Georgia, or which may hereafter be chartered in this State, any sum or sums of money, the proceeds of her own labor, or that of her children, less than two thousand dollars in the aggregate, and may control, draw for, dispose of, devise, or transfer, in any way whatever, the sum or sums thus deposited, in every respect as if she were not a married woman.] (a)

Wife may
deposit ear-
nings.

May control,
etc., as feme
sole.

§ 1763. The wife's paraphernalia shall not be subject to the debts or contracts of the husband; and shall consist of the apparel of herself and her children, her watch and ornaments suitable to her condition in life, and all such articles of personalty as have been given to her for her own use and comfort.

Parapher-
nalia.

§ 1764. In all cases where the rights of the wife come in conflict with the interest of the husband, she may appear in Court by her next friend. In all other civil cases, except as to her separate estate, she must appear by and with her husband, if living together.

When the
wife may ap-
pear against
husband.

(a) Act of 1861, p. 23, and Acts of 1866, p. 226.

Article 3.—Marriage Contracts and Settlements.

ARTICLE III.

OF MARRIAGE CONTRACTS AND SETTLEMENTS.

SECTION.

- 1765. Marriage article or parol, etc.
- 1766. Voluntary execution, etc.
- 1767. Construction of contract.
- 1768. Record of marriage contracts.
- 1769. Wife may force a record.
- 1770. Appointing and removing trustees.

SECTION.

- 1771. Executed in favor of volunteers.
- 1772. Valuable consideration.
- 1773. Wife *feme sole*, etc.
- 1774. When sue and be sued.
- 1775. Minority of party to contract.
- 1776. Sale to husband or trustee.

Marriage article or parol agreement.

§ 1765. Any agreement between the parties to a marriage contemplating a future settlement upon the wife, whether by parol or in writing, may be executed and enforced by a Court of Equity at the instance of the wife at any time during the life of the husband; *provided always*, that the rights of third persons, purchasers or creditors in good faith, and without notice, are not affected thereby. An agreement perfect in itself, and which needs no future conveyance to effect its purposes, is an executed contract, and does not come under the definition of marriage articles.

Voluntary execution and trust deeds.

§ 1766. The husband may voluntarily execute such agreement, or he may at any time during the coverture, either through trustees or directly to his wife, convey any property to which he has title subject to the rights of prior purchasers or creditors without notice.

Construction of contract.

§ 1767. Every marriage contract in writing, made in contemplation of marriage, shall be liberally construed to carry into effect the intention of the parties, and no want of form or technical expression shall invalidate the same. Such contract must be attested by at least two witnesses.

Record of marriage contracts.

§ 1768. Every marriage contract and every voluntary settlement made by the husband on the wife, whether in execution of marriage articles or not, must be recorded in the office of the Clerk of the Superior Court of the County of the residence of the husband within three months after the execution thereof. On failure to comply with this provision, such contract or settlement shall not be of any force or effect against a purchaser, or creditor, or surety who, *bona fide* and without notice, may become such before the actual recording of the same. If such contract or settlement is made in another State, and the parties subsequently move into this State, the record must be made within three months from such removal. If the settled property be in this State, and the

Article 3.—Marriage Contracts and Settlements.

parties reside in another, then the record must be made in the County where the property is, and within the time specified above.

§ 1769. If the trustee or husband having possession of such contract or settlement fails or refuses to have the same recorded, the wife, or any friend of hers, may apply to the Judge of the Superior Court at any time for an order compelling such record; and the trustee thus refusing, after demand, shall be personally responsible to his *cestui que trust* for all damage sustained by reason of the failure to record; and such application of the wife, or her friend, when entered on the minutes of the Superior Court, shall be a notice equivalent to the record of the marriage contract or trust deed.

Wife may force a record.

§ 1770. The Judge of the Superior Court of the County of the wife's domicile may, at any time, upon petition, exercise the powers of a chancellor in appointing, or removing, or substituting trustees, or granting any order for the protection of the trust estate, exercising a wise discretion as to the terms on which such appointment shall be made, or such order granted. The proceeding in each case shall be transmitted to the Clerk of the Superior Court, to be recorded in the book of the minutes of such Court, next to the minutes of the last term thereof.

Appointing and removing trustees.

§ 1771. Marriage contracts and post nuptial settlements will be enforced at the instance of all persons in whose favor there are limitations of the estate. Marriage articles will be executed only at the instance of persons coming within the scope of the marriage consideration; but when executed at their instance, the Court may execute also in favor of volunteers. All persons are volunteers except the parties to the contract and the offspring of the wife.

When executed in favor of volunteers.

§ 1772. Marriage is a valuable consideration, and the wife stands, as to property of the husband settled upon her by marriage contract, as other purchasers for value; *provided*, that by such contract the husband does not incapacitate himself from paying his existing just debts.

Valuable consideration.

§ 1773. The wife is a *feme sole* as to her separate estate, unless controlled by the settlement.—Every restriction upon her power in it must be complied with; but while the wife may contract, she can not bind her separate estate by any contract of suretyship, nor by any assumption of the debts of her husband, and any sale of her separate estate, made to a creditor of her husband in extinguishment of his debts, shall be absolutely void.

Wife feme sole as to her separate estate.

Article 1.—Legitimate Children.

§ 1774. If there is no trustee, the wife may sue and be sued, as ^{When sue and be sued.} to her separate estate, as a *feme sole*; and in all such cases the separate estate shall be responsible for all costs incurred.

§ 1775. The minority of either party to marriage articles, or a ^{Minority of party to contract.} marriage contract, shall not invalidate it; *provided*, such party is of lawful age to contract marriage.

§ 1776. No contract of sale of a wife as to her separate estate ^{Sale to husband or trustee.} with her husband or her trustee shall be valid, unless the same is allowed by order of the Superior Court of the County of her domicile.

CHAPTER II.

OF PARENT AND CHILD.

ARTICLE 1.—*Legitimate Children.*ARTICLE 2.—*Illegitimate Children, or Bastards.*

ARTICLE I.

LEGITIMATE CHILDREN.

SECTION.

- 1777. Legitimate children—who are.
- 1778. Legitimizing by order of Court.
- 1779. Adopting a child.
- 1780. Objections by relative.
- 1781. Adoption of adult persons.
- 1782. Age of majority.

SECTION.

- 1783. Parents' obligation.
- 1784. Parents' power—how lost.
- 1785. Mother's rights.
- 1786. Cruel treatment by parent.
- 1787. Mutual protection.

§ 1777. All children born in wedlock, or within the usual period of gestation thereafter, are legitimate. ^{Legitimate children.} The legitimacy of a child thus born may be disputed. Where possibility of access exists, except in cases of divorce from bed and board, the strong presumption is in favor of legitimacy, and the proof should be clear to establish the contrary. If pregnancy existed at the time of the marriage, and a divorce is sought and obtained on that ground, the child, though born in wedlock, is not legitimate. The marriage of the mother and reputed father of an illegitimate child, and the recognition of such child as his, shall render ^{Subsequent marriage.} the child legitimate; and in such case, the child shall immediately take the surname of his father.

Article 1.—Legitimate Children.

§ 1778. A father of an illegitimate child may render the same legitimate by petitioning the Superior or County Court of the County of his residence, setting forth the name, age and sex, of such child, and also the name of the mother; and if he desires the name changed, stating the new name and praying the legitimating of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the Court may pass an order declaring said child to be legitimate, and capable of inheriting of the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known.

Legitimacy
by order of
Court.

§ 1779. Any person desirous of adopting a child, so as to render it capable of inheriting his estate, may present a like petition to the Superior Court, setting forth, as an additional fact, the name of the father, or if he be dead, or has abandoned his family, the mother, and the consent of such father or mother to this act of adoption; and if the child has neither father nor mother, then the consent of no person shall be necessary to said adoption. It shall be the duty of the Court, upon being satisfied of the truth of the facts stated in the petition, and of the fact that such father or mother has notice of such application, and being further satisfied that such adoption will be to the interest of the child, to pass an order declaring said child to be the adopted child of such person, and capable of inheriting his estate, and also what shall be the name of such child; and thenceforward the relation between such person and the adopted child shall be, as to their legal rights and liabilities, the same as if the relation of parent and child existed between them, except that the adopted father shall never inherit from the child; but to all other persons the adopted child shall stand related as if no such act of adoption had been taken.

Adopting a
child.

Effect
thereof.

§ 1780. It shall be the privilege of any person related by blood to such child, if there be no father or mother, to file objections to such application, and the Court, after hearing the same, shall determine, in its discretion, whether or not the same constitute a good reason for refusing the application.

Objections
by relations.

§ 1781. Adult persons may be adopted in like manner, and have their names changed, on giving consent to such adoption.

Adopting
of adult
persons.

§ 1782. The age of legal majority in this State is twenty-one years; until that age all persons are minors.

Age of
majority.

§ 1783. Until majority, it is the duty of the father to provide for the maintenance, protection, and education of his child.

Parent's
obligation.

Article 1.—Legitimate Children.

§ 1784. Until majority, the child remains under control of the father, who is entitled to his services and the proceeds of his labor. This paternal power is lost—

Parental
power—how
lost.

1. By voluntary contract, releasing the right to a third person.
2. By consenting to the adoption of the child by a third person.
3. By the failure of the father to provide necessaries for his child, or his abandonment of his family.

4. By his consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time.

5. By his consent to the marriage of the child, who thus assumes inconsistent responsibilities.

6. By cruel treatment of the child.

§ 1785. Upon the death of the father, the mother is entitled to the possession of the child until his arrival at such an age that his education requires the guardian to take possession of him. In cases of separation of the parents, or the subsequent marriage of the survivor, the Court, upon writ of *habeas corpus*, may exercise a discretion as to the possession of the child, looking solely to his interest and welfare.

Mother's
rights.

§ 1786. Any person may apply to the Ordinary of the County, alleging the cruel treatment of a child by his father, who shall cite the father to answer the allegation; and such Ordinary may, at any time, hear evidence, and, in his discretion, appoint a guardian of the person of such child, who shall be entitled to the possession of him.

Cruel treat-
ment by pa-
rent.

§ 1787. Parents and children may mutually protect each other, and justify the defense of the person or reputation of each other.

Mutual
protection.

ARTICLE II.

ILLEGITIMATE CHILDREN, OR BASTARDS.

SECTION.

1788. Bastards.
1789. Father's obligations.
1790. Mother's right.

SECTION.

1791. Inheritance by bastard.
1792. By legitimates from bastard.

§ 1788. A bastard is a child born out of wedlock, and whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock.

Bastard.

Article 2.—Illegitimate Children, or Bastards.

§ 1789. The father of a bastard is bound to maintain him. Father's obligation.
 This obligation shall be good consideration to support a contract by him. He may voluntarily discharge this duty; if he fails or refuses to do it the law will compel him.

§ 1790. The mother of a bastard is entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power. Mother's rights.

§ 1791. Bastards have no inheritable blood, except that given to them by express law. They may inherit from their mother and from each other, children of the same mother, in the same manner as if legitimate. If a mother have both legitimate and illegitimate children, they shall inherit alike the estate of the mother. If a bastard dies leaving no issue or widow, his mother, brothers, and sisters shall inherit his estate equally. In distributions under this law the children of a deceased bastard shall represent the deceased parent. Inheritance by bastard.

§ 1792. If a bastard dies intestate, leaving no widow or lineal descendant, or illegitimate brother or sister, or descendant of a By legitimates from illegitimates brother, or sister, or mother, but shall leave a brother or sister of legitimate blood, such brother or sister, or descendant of such brother or sister, may inherit the estate of such intestate.

CHAPTER III.

OF GUARDIAN AND WARD.

ARTICLE 1.—*Guardians of Minors.*

ARTICLE 2.—*Guardians of Lunatics and Idiots.*

ARTICLE 3.—*Foreign Guardians.*

ARTICLE I.

SECTION 1.—*How and by whom Appointed.*

SECTION 2.—*Their Powers, Duties, and Liabilities.*

SECTION 3.—*Settlements, Resignation, and Letters of Dismission.*

Section 1.—Guardians—how and by whom appointed.

SECTION I.

HOW AND BY WHOM APPOINTED.

SECTION.

- 1793. Kinds of guardians.
- 1794. Natural guardian.
- 1795. Testamentary guardian.
- 1796. Appointed by widows.
- 1797. General guardian.
- 1798. Of property of non-resident ward.
- 1799. Mother-guardian.
- 1800. Appointment of clerk or stranger.
- 1801. Guardian of bastard.
- 1802. Notice of application.

SECTION.

- 1803. Bond and oath.
- 1804. Taken in vacation.
- 1805. Additional bond.
- 1806. New sureties.
- 1807. Proceedings in case of misconduct.
- 1808. Motion by surety.
- 1809. Revocation does not abate suit.
- 1810. Suit on bond.
- 1811. Removing proceedings, etc.
- 1812. Guardian *ad litem*.

Kinds of guardians. § 1793. Guardians of minors may be either—1st, natural guardians; 2d, testamentary guardians; 3d, guardians of person and property, or either.

Natural guardian. § 1794. The father, if alive, is the natural guardian; if dead, the mother is the natural guardian. The natural guardian can not demand or receive the property of the child until a guardian's bond is filed and accepted by the Ordinary of the County. If such natural guardian fail or refuse to give bond and surety the Ordinary may appoint another guardian to receive such property.

Testamentary guardian. § 1795. Every father may, by will, appoint guardians for the persons, or property, or both, of his children, and such guardians shall not be required to give bond and security, except in case of waste committed or apprehended, or property coming to the ward from sources other than the father's will, when the Ordinary shall require the same. If a testamentary guardian fails to give bond as required, the Ordinary may dismiss him as guardian and appoint another, or may appoint another guardian for the property thus accruing. In all other respects a testamentary guardian shall stand on the same footing with other guardians appointed by the Ordinary.

Appointed by widows. § 1796. The mother, if a widow, shall have the power by will to appoint testamentary guardians for such children as have none, as to their persons, and as to such property as they may inherit from her.

General guardian. § 1797. The Ordinary of the County of the domicil of a minor having no guardian shall have the power of appointing a guardian of the person and property, or either, of such child. If the ward be above the age of fourteen years before a guardian is appointed,

Section 1.—Guardians—how and by whom appointed.

he shall have the privilege of selecting a guardian, and if such selection be judicious the Ordinary shall appoint him. The ward having once exercised this privilege can not do so again, except upon cause shown for the removal of the first selection.

§ 1798. If a minor is non-resident, but has property in this State, the Ordinary of the County where the property is may appoint a guardian, who shall have control only over such property. Of property of non-resident ward.

§ 1799. In the appointment of guardians, the widowed mother shall have the preference upon complying with the law. Upon her marrying again the letters are revoked, though her husband shall be responsible to the ward as guardian, if no other guardian be appointed. Among collaterals applying for the guardianship, the nearest of kin by blood, if otherwise unobjectionable, shall be preferred—males being preferred to females. The Ordinary, however, in every case may exercise his discretion according to the circumstances, and if necessary grant the letters to a stranger in blood. Mother-guardian.

§ 1800. If there be no application for letters of guardianship, and a necessity for a guardian exists, the Ordinary, after giving notice for thirty days, may vest such guardianship in the Clerk of the Superior or Inferior Court of the County, or in any other person or persons residing in said County, whom he shall deem fit and proper, in his discretion, requiring bond and security as in other cases. Appointment of Clerk or stranger.

§ 1801. The Ordinary may appoint a guardian for the person and property of an illegitimate child in all cases where he may deem it necessary. Guardian of bastards.

§ 1802. Every application to be appointed guardian of a minor under the age of fourteen years, other than the child of the applicant, shall be made to the Ordinary, and notice thereof given by him in some public gazette of this State, at least thirty days before such letters shall be granted. At the regular term next after the expiration of the notice, the letters may be granted either to the applicant or some other person, in the discretion of the Court. In the meantime a temporary guardian may be appointed under the same rules as apply to the appointment of temporary administrators. Notice of application.

§ 1803. Every guardian, appointed by the Ordinary, before entering on the duties of his appointment, shall take before the Ordinary an oath, or affirmation, well and truly to perform the duties Bond and oath.

Section 1.—Guardians—how and by whom appointed.

required of him as guardian, and faithfully to account with his ward for his estate ; and shall also give bond with good and sufficient security, to be approved by the Ordinary, in double the amount of the supposed value of the property of the ward, for the faithful discharge of his duty as guardian : such bond shall be payable to the Ordinary and his successors. A substantial compliance as to all matter of form shall be sufficient.

§ 1804. The taking of the oath and giving the bond may be ^{Taken in vacation.} done at any time in vacation, the appointment being made at a regular term. The bond when taken shall be recorded by the ^{Bond re-} Ordinary in a book to be kept by him for that purpose, and the ^{corded.} original kept of file in his office.

§ 1805. If at any time after appointment other property shall ^{Additional bond.} descend, or come, or be given, or otherwise accrue to the ward, the Ordinary may require the guardian to give an additional bond with security in double the amount of such property, and on his failure to comply, the Ordinary may appoint a special guardian for such property ; [and whenever it shall come to the knowledge of the Ordinary, either by annual returns or otherwise, that the bond and security of any guardian is not of sufficient amount to be of double the amount of the property or funds in the hands of such guardian, or that such bond and securities are otherwise insufficient in the judgment of such Ordinary, it shall be his duty to give notice to said guardian to come forward at the next term of the Court of said Ordinary and give additional security to said Ordinary, or give a new bond with good securities ; and on failure to do so, the authority of said guardian shall cease ; and said Ordinary shall appoint, in terms of the law, a guardian to take the place of said defaulting guardian.] (a)

§ 1806. If one or more of the sureties on the guardian's bond ^{New sure-} shall die, or become insolvent, or remove from this State, or from ^{ties.} other cause the security become insufficient, the Ordinary may of his own motion, or at the instance of any relative of the ward, require the guardian to give other and sufficient security, and on his failure so to do in compliance with such order, the Court shall revoke his letters of guardianship, and appoint some other person in his place.

§ 1807. If the Ordinary knows, or is informed, that any guar-

Section 1.—Guardians—how and by whom appointed.

dian wastes, or in any manner mismanages the property, or does not take due care of the maintenance and education of his ward according to his circumstances, or refuses to make returns as required by law, or for any cause is unfit for the trust, the Ordinary shall cite such guardian to answer to such charge at some regular term of the Court, when, upon investigation of his actions, the Ordinary may, in his discretion, revoke his letters, or pass such other order as in his judgment is expedient under the circumstances of each case.

Proceedings
in case of
misconduct.

§ 1808. The surety of any guardian on his bond, or if dead, his representative, may at any time make complaint to the Ordinary of any misconduct of his principal in the discharge of his trust, or for any other reason show his desire to be relieved as surety; thereupon the Ordinary shall cite the guardian to appear at a regular term of the Court, and show cause why such surety shall not be discharged; and upon hearing the parties and their evidence, the Ordinary may, at his discretion, pass an order discharging such surety from all future liability, and requiring such guardian to give new and sufficient security, or be discharged from his trust; such new sureties shall be liable for past as well as future waste or misconduct of the guardian. And such discharged surety shall be relieved only from the time the new security shall be given. If new security is not given, and the guardian's trust is revoked, the discharged surety shall be bound for a true accounting of such guardian with the new guardian, or his ward, if no other guardian is appointed. The death of a surety shall be a sufficient ground for his discharge from future liability on application of his representative and the granting the order. In all cases where letters of guardianship are revoked, the sureties on the bond are liable for all the acts of the guardian in relation to his trust up to the time of his settlement with the new guardian or his ward.

Motion by
surety.

Proceedings

Liability of
new sureties

Of old sure-
ties.

§ 1809. The revocation of letters of guardianship shall not abate any suit pending for or against the guardian, but the new guardian shall be made a party by *sci. fa.* as in case of the death of a party.

Revocation
does not
abate suit.

§ 1810. Suit may be instituted against the guardian and his sureties on his bond in the same action at the instance of his ward, or a new guardian, or any other person interested, without first suing the guardian. And if the guardian is beyond the jurisdiction of the Court, or places himself in the position of a debtor, liable to attachment, or is dead, and his estate unrepresented, suit

Suit on bond

Section 1.—Guardians—how and by whom appointed.

Proviso. may be commenced against the sureties alone; *provided*, that the *fi. fa.* issued upon a judgment obtained against the guardian and his sureties shall not be levied upon the property of the sureties until a return of *nulla bona* as to the guardian, unless the property of the sureties is being removed from the County. If the failure to sue the guardian arose from his voluntary act, the judgment against the sureties shall be conclusive in any suit against him.

Effect of judgment.

Removing proceedings to another County.

§ 1811. A guardian whose residence is, or by removal or otherwise becomes, in a different County from that of his appointment, may have the privilege of removing the trust to the jurisdiction of the Ordinary of his own County, by first giving bond and good security to such Ordinary, as if first appointed by him, and filing a certificate of such fact with the Ordinary by whom he was appointed. He shall also obtain from such Ordinary an exemplification of all the records concerning his guardianship, and of the order passed transferring the same to the County of his residence, which exemplification shall be filed with and recorded by the Ordinary of said County, who shall then have the same jurisdiction over such guardian as if first appointed by him. The sureties upon such guardian's first bond shall be liable only for past misconduct. The sureties upon the new bond shall be liable for both past and future misconduct.

Liability of sureties.

Guardian *ad litem*.

§ 1812. Whenever a minor is interested in any litigation pending in any Court in this State, and has no guardian, or his interest is adverse to that of his guardian, such Court shall have power to appoint a guardian *ad litem* for such minor, which guardian shall be responsible to such minor for his conduct in connection with such litigation in the same manner as if he were a regularly qualified guardian.

SECTION II.

THE POWERS, DUTIES, AND LIABILITIES OF GUARDIANS.

SECTION.

- 1813. Power of guardian.
- 1814. Returns.
- 1815. Amount of expenditure.
- 1816. Binding out indigent persons.
- 1817. Ill treatment.
- 1818. Failing to make returns.
- 1819. Sales.
- 1820. Renting of lands.
- 1821. Contracts for labor.

SECTION.

- 1822. Working them together.
- 1823. Cultivating plantations, etc.
- 1824. Investment in stocks.
- 1825. Commissions.
- 1826. If there be two guardians.
- 1827. Sureties bound, etc.
- 1828. Contracts by guardian.
- 1829. May appoint attorney in fact.

Section 2.—Powers, Duties, and Liabilities of Guardians.

§ 1813. The power of the guardian over the person of his ward is the same with the father over his child, the guardian standing in his place; and in like manner it is the duty of the guardian to protect and maintain, and, according to the circumstances of the ward, to educate him.

Power of guardian.

His duty.

§ 1814. Every guardian, within twelve months after his appointment, and by the first Monday in July in every year thereafter, shall make a return to the Ordinary under oath, making an accurate exhibit of all the property of his ward received by him up to that time and since his last return, together with an account current of his receipts and expenditures, accompanied with the vouchers for the same, and any other matter connected with the said property, which said return shall be examined by the Ordinary, and if found correct shall be allowed by him and entered of record with the vouchers; and the judgment thus rendered by the Ordinary shall be *prima facie* evidence of the correctness of said return in favor of said guardian. If the guardian shall have removed beyond the limits of this State, the oath of his surety shall be sufficient to verify the return.

Returns.

§ 1815. Every guardian shall be allowed all reasonable disbursements and expenses suitable to the circumstances of the orphan committed to his care. But the expenses of maintenance and education must not exceed the annual profits of the estate, except by the approval of the Ordinary previously granted. The Ordinary may, in his discretion, allow the corpus of the estate, in whole or in part, to be used for the education and maintenance of the ward.

Amount of expenditure.

§ 1816. If the annual profits of the estate of any orphan, with or without a guardian, are not sufficient for his education and maintenance, [and the Ordinary shall not allow the corpus of the estate to be used for such education and maintenance,] (a) it shall be the duty of the Ordinary forthwith to bind out such orphan for the whole or such part of the time of his minority as to him shall seem best, and on such conditions as will most promote the interest of such orphan, in all cases requiring that such orphan shall be allowed to attend the nearest school, where education is free to him, at least three months in the year.

Binding on indigent orphans.

§ 1817. It shall be the duty of the Ordinary and of the guardian

Section 2.—Powers, Duties, and Liabilities of Guardians.

Ill treatment. of such orphan to be informed as to his treatment, and on complaint of ill usage, or any condition broken, the Ordinary shall bind such orphan to some other person.*

Failing to make returns. § 1818. The Ordinary shall keep a docket of all the guardians liable to make returns to him, and upon the failure of any one to do so by the time required by law, he shall cite the said guardian to appear and show the reason for his delay; and every guardian who shall fail or refuse to make his return before the end of the year, shall receive no commission or compensation for any service done during that year, unless by special order of the Court of Ordinary, exonerating him from all blame.

Sales. § 1819. All sales of any portion of the property of the ward shall be made under the direction of the Ordinary, and under the same rules and restrictions as are prescribed for sales by administrators of estates.

Renting of lands. § 1820. Every renting of lands of an orphan, unless by special order of the Ordinary, shall be in public to the highest bidder, and under the same rules as Sheriff sales, except that credit may be given on good security.

May contract for labor. § 1821. [Guardians may make contracts for labor or service with persons of color, or with white persons, for the benefit of the estates of their wards, upon such terms as they may deem best, and all such contracts made in good faith shall be a charge upon and bind said estates whenever the same are approved by the Ordinary of the County.] (a)

Working them together. § 1822. Guardians, under a like order, may keep such persons together, and have them employed in such agricultural or other operations as such guardians may deem manifestly expedient.

Cultivation and purchasing plantation. § 1823. When it is manifestly expedient, guardians may cause plantations of their wards to be managed and cultivated for their benefit, and when not possessed of lands, under a like order of the Court, guardians may invest a portion of the funds of their wards in lands for the purpose of cultivation as hereinbefore provided.

Investment in stocks. § 1824. Any guardian, in his discretion, may invest any funds of his ward in his hands in stocks, bonds, or other securities issued by this State. In every such case his return shall set forth the time of such purchase, the price paid, and the name of the person from whom purchased. All such investments shall be free

* See further on this subject Sections 1865, 1866. (a) Acts of 1866, p. 87.

Section 2.—Powers, Duties, and Liabilities of Guardians.

from taxation during the minority of the ward for whom they are held.

§ 1825. Guardians shall be allowed the same commissions for receiving and paying out the estate of their wards as are allowed to administrators. Extra compensation and traveling expenses shall be allowed to them upon the same principles as to administrators. When the guardian keeps together and works the employees of a ward, the Court shall allow him a reasonable compensation for such services, taking into consideration the commissions he may receive. Commissions.

§ 1826. If the guardian resigns or dies, or is removed under any circumstances, no commissions shall be allowed for turning over the estate to a new guardian, or to the new guardian for receiving the same; and where a guardian is removed for waste or gross mismanagement, no commissions shall be allowed for any of his services. If there be two guardians.

§ 1827. If the appointment of a guardian for any cause is declared void, his sureties shall nevertheless be responsible on the bond for any property which may have been received by him by virtue or reason of his appointment. Sureties bound, etc.

§ 1828. The guardian can not borrow money and bind his ward therefor, nor can he, by any contract other than those specially allowed by law, bind his ward's property, or create any lien thereon. Contracts by guardians.

§ 1829. The guardian may appoint an attorney in fact to act for him where he is unable to act himself, and he and his sureties are bound for the acts of such attorney as if it were his personal deed. May appoint attorney.

SECTION III.

SETTLEMENTS OF GUARDIANS, RESIGNATION, AND LETTERS DISMISSORY.

SECTION.

- 1830. Settlements before the Ordinary.
- 1831. At the instance of the guardians.
- 1832. Duty of the Court.
- 1833. Continuance.
- 1834. Proceedings.
- 1835. Power of the Ordinary.
- 1836. Enforcement of decision.

SECTION.

- 1837. Final receipts.
- 1838. Right of ward to re-open, etc.
- 1839. Resignation of guardian.
- 1840. Letters of dismissal.
- 1841. Disposition of money, etc., in hand.
- 1842. Ward dying, etc.

§ 1830. A ward, on arriving at majority, or marrying a man of full age, or a new guardian legally appointed, may apply to the Settlements before the Ordinary.

Section 3.—Settlements of Guardians, etc.

Ordinary for an order requiring the guardian to appear and submit to a settlement of his accounts. Such citation shall be served as other citations, and shall be returnable to a regular term of the Court. If the guardian fails or refuses to appear as cited, the Court may proceed *ex parte*.

At instance of the guardian. § 1831. The guardian shall, in like manner, be allowed to cite his ward, or a new guardian, to appear and be present at a settlement of his account.

Duty of the Court. § 1832. Upon the return of such citation, the Court shall proceed to examine all the returns and accounts of such guardian; to hear all evidence which may be produced by either party; and to make a full, fair and final settlement between such guardian and his ward, making a full record of such final settlement.

Continuance. § 1833. The Court may allow such continuances as the principles of justice require.

Proceedings. § 1834. Such other proceedings may be had in the case as are usual in other causes in said Court.

Power of Ordinary. § 1835. It shall be in the power of the Ordinary to order any property in the hands of the guardian to be delivered to the ward or the new guardian, and also to issue an execution for any balance of money found due by the guardian to the ward. If the ward does not appear, the Court may pass an order stating the balance found due from the guardian, which balance shall not bear interest from that date until demanded by the ward or new guardian.

Enforcement of decision. § 1836. If the guardian shall fail or refuse to deliver to the ward the property in his hands, ordered to be delivered by the Court, the Ordinary shall have power to attach him for contempt, and imprison him in the common jail until he shall comply with such order, such proceedings to be had in the issuing of such attachment as are usual in Courts of Equity.

Final receipts. § 1837. Any guardian, by having his final receipt from his ward attested by a Judge, Justice of the Peace, or Notary Public, may cause the same to be recorded by the Clerk of the Superior Court of the County of his residence, and the original, or a copy thereof, shall be admitted in evidence, on the same terms as registered deeds.

Right of ward to re-open settlement. § 1838. No final settlement made between the guardian and ward shall bar the ward, at any time within four years thereafter, from calling the guardian to a settlement of his accounts, unless

Section 3.—Settlements of Guardians, etc.

it is made to appear that the same was made after a full exhibit of all the guardian's accounts, and with a full knowledge by the ward of his legal rights.

§ 1839. Any guardian who, from age, infirmity, removal from the County, or for any other cause, desires to resign his trust as such, may apply to the Ordinary having jurisdiction of the trust, setting forth the reasons therefor, and also the name of some suitable person willing to accept the trust, whereupon the Ordinary shall cite such person, and also the nearest of kin of such ward, to appear at the next term of said Court, and if the Ordinary shall be satisfied that such change of guardians will not be detrimental to the interest of the ward, and no good cause is shown against it, he shall grant the prayer of the applicant, discharging him from his trust on the following condition—viz, that he shall, forthwith, deliver all property and pay all money held by him as such guardian, upon a fair settlement of his accounts, to his successor; and upon the filing of the evidence of such settlement, and the receipt in full of his successor, the guardian shall be discharged from his said trust. The ward shall have the privilege, within five years after he comes of age, to re-open such settlement and call for an account.

Resignation
of guardian.

Condition.

§ 1840. Letters of dismission may be granted by the Ordinary to any guardian, upon his compliance with the following provisions:

Letters of
dismission.

1. An application in writing, setting forth his full discharge of the duties of his trust.

2. An examination of his accounts and vouchers by the Ordinary, to verify the truth of the petition.

3. The publication of such application for forty days, in the public gazette where the legal notices of the Ordinary's office are usually published.

4. The examination of any objections filed, and the proof to the Ordinary that the ward is of age.

§ 1841. If it shall appear that such guardian has in his hands any money, property, or effects of his ward, the Ordinary may cause the same, if money, to be deposited in some solvent bank, and if other property, to be delivered to some proper person to be appointed by the Ordinary, under such restrictions as he may deem best for the preservation of the property, and then grant the letters dis-missory; or the Ordinary may, if he sees proper, pass an order

Disposition
of money,
etc., in hand.

Article 2.—Guardians of Lunatics, Idiots, etc.

requiring the guardian to retain the funds in his own hands at an interest not exceeding four per cent. per annum, his sureties being still responsible therefor.

§ 1842. When a ward shall die intestate, pending his minority, the guardian shall proceed to distribute his estate in the same manner as if he had been appointed administrator upon such estate, and the sureties on his bond shall be responsible for his faithful administration and distribution of such estate.

Ward dying,
guardian
shall act as
administra-
tor.

ARTICLE II.

GUARDIANS OF LUNATICS AND IDIOTS AND PERSONS NON COMPOS MENTIS.

SECTION.

- 1843. Guardian—for whom appointed.
- 1844. Oath and bond, powers, etc.
- 1845. Wife may be guardian.
- 1846. Proceeding to obtain commission.
- 1847. Return and appointment.
- 1848. Appeal.
- 1849. Second application.

SECTION.

- 1850. Witnesses.
- 1851. Proceedings to end a commission.
- 1852. Issue—how made and tried.
- 1853. Other provisions as general guardian.
- 1854. Confining ward.
- 1855. Proceedings to confine him, etc.

§ 1843. The Ordinaries of the several Counties of this State may appoint guardians for the following persons—viz: Idiots, lunatics, and insane persons, and deaf and dumb persons when incapable of managing their estates, habitual drunkards,* and persons imbecile from old age or other cause, and incapable of managing their estates.

For whom
guardians
may be ap-
pointed.

§ 1844. Guardians so appointed shall take the same oath and give a like bond with guardians of minors, and their powers, duties, and liabilities, shall be the same, and be exercised under the same rules and regulations.

Oath and
bond, pow-
ers and du-
ties.

§ 1845. The wife shall, in all cases, be entitled to the preference to the appointment as guardian, and her bond and all acts as guardian shall be held and construed as if she were a *feme sole*.

Wife may
be guardian.

§ 1846. Upon the petition of any person on oath, setting forth that another is liable to have a guardian appointed under the provisions of this Article, the Ordinary, upon proof that ten days' notice of such application has been given to the three nearest adult relatives of such person, or that there is no such relative

Proceedings
to obtain
commission.

* See Section 1387.

Article 2.—Guardians of Lunatics, Idiots, etc.

within this State, shall issue a commission directed to any eighteen discreet and proper persons, one of whom shall be a physician, requiring any twelve of them, including the physician, to examine by inspection the person for whom guardianship is sought, and to hear and examine witnesses, on oath, if necessary, as to his condition and capacity to manage his estate, and to make return of such examination and inquiry to the said Ordinary, specifying in such return under which of said classes they find the said person to come. Such commissioners shall first be sworn by a Justice of the Peace “well and truly to execute the said commission to the best of their skill and ability,” which oath shall be returned with their verdict.

§ 1847. Upon such return finding the person to be as alleged in the petition, or within either of said classes, the Ordinary shall appoint a guardian for him. Return and appointment

§ 1848. The applicants for a commission, or the person for whom the guardianship is sought, or any friend or relative for him dissatisfied with the return of the committee, may, upon paying all costs, and giving bond and security for all future costs and damages, within four days after the report has been acted on by the Ordinary, enter an appeal to the Superior Court of the County, where the issue shall be submitted to a special jury, selected as in other cases; but the guardian appointed by the Ordinary shall act as such pending the litigation. Appeal.

Guardian
ad litem.

§ 1849. When one application for guardianship under this article has failed upon the merits, the Ordinary shall not issue a second commission, unless the petition is verified by at least three respectable disinterested neighbors, in addition to the oath of the applicant. Second application.

§ 1850. The Ordinary may issue subpoenas for witnesses to appear before the commission thus appointed; and on their failure to appear, the Ordinary may take the same steps to compel attendance as if the proceeding was before his Court. Witnesses.

§ 1851. Any person, for whom a guardian is appointed under this article, upon restoration to sanity and capacity, may personally, or by attorney, petition the Ordinary, setting forth the fact and praying the revocation of such guardianship. Upon such petition, the Ordinary may examine into the truth thereof, and if satisfied of its truth, and the guardian consenting thereto, the Proceedings to end a commission.

Article 2.—Guardians of Lunatics, Idiots, etc.

Ordinary shall grant the prayer and order the guardian forthwith to deliver over to such person his property, money and effects.

Issue—how
made and
tried.

§ 1852. If the Ordinary is not satisfied as to the truth of the petition, or the guardian, or any relative of the applicant objects to the revocation of the letters, the Ordinary shall require the Sheriff to summon eighteen men, competent to serve as jurors, to appear before said Ordinary on a day specified, any twelve of whom being duly sworn, shall constitute a jury before whom shall be tried the issue as to the truth of the application: upon a verdict affirming its truth, the Ordinary shall grant the prayer and order above specified.

Other pro-
visions same
as general
guardians.

§ 1853. All the provisions made in this Code as to the settlements of guardians of minors, their resignation, letters of dismission, and distribution of the estate of deceased wards, shall apply to guardians appointed under this Article.

Confining
ward.

§ 1854. Guardians of insane persons are authorized to confine them, or place them in the asylum, if such a course is necessary either for their own protection or the safety of others; and a guardian willfully failing to take such precaution with his ward shall be responsible for injuries inflicted on others by such ward.

Proceedings
to confine
him at in-
stance of
third per-
sons.

§ 1855. [When there is no guardian for an insane person, or the guardian on notice refuses or fails to confine his ward, and any person shall make oath that such insane person, for public safety or other good and sufficient reason, should not longer be left at large, any one of the Justices of the Inferior Court, before whom said oath is made, shall issue a warrant, as in criminal cases, for the arrest of such insane person, to bring him before the Inferior Court on a day specified; and said Court, on an investigation of the facts, may commit such insane person to the lunatic asylum, and if necessary, cause him to be temporarily committed to jail until he can be removed to the asylum; and the expense of such confinement and the proceedings, shall be paid out of the estate of such insane person, if any, and if not, out of the County funds.] (a)

Costs.

(a) Acts of 1866, p. 22.

Article 3.—Foreign Guardians.

ARTICLE III.

FOREIGN GUARDIANS.

SECTION.

1856. Foreign guardian may recover, etc.

1857. Order of Ordinary.

1858. Discretion of Ordinary.

SECTION.

1859. Receipt.

1860. Enforcing order.

1861. Removal of guardian and ward, etc.

§ 1856. When a minor, idiot, lunatic or insane person resides in another State, and by any reason is entitled to property in the hands of any executor, administrator, trustee, or guardian within this State, and there is no sufficient reason why such property should not be transferred to a guardian appointed under the laws of such other State, the same may be done in the following manner:

Foreign guardian may recover property, etc

1. The foreign guardian shall give bond with good security to the proper authority in his own State for the faithful execution of such guardianship, in double the amount of the value of the property in this State, over and above the sum in which he may be bound for the guardianship of property then in that State.

Bond.

2. He shall produce to the Ordinary, to whose Court such executor, administrator, trustee or guardian is bound to make returns, an exemplification, authenticated as required by the Act of Congress, showing that he has complied with the above condition, and having also the certificate of the proper officer as to the sufficiency of the security to his bond.

Exemplification.

3. He shall give twenty days' notice to such executor, administrator, trustee, or guardian of such intended application.

Notice.

§ 1857. Upon compliance with these conditions, the Ordinary may order the transfer of all such ward's estate to the foreign guardian, and may order the sale of any real estate if necessary for settlement with such foreign guardian. If there exists any reason why such estate or any portion of it should not be removed from this State, the Ordinary may hear any one interested in the question, and refuse the order in his discretion.

Order of Ordinary.

Objections.

§ 1858. The exemplification and certificate produced by the foreign guardian shall not be conclusive, but the Court may hear evidence as to the fitness and competency of the guardian for his trust or the sufficiency of his security, or any other matter or thing going to show the impropriety of granting the order asked for, and in his discretion the Ordinary may refuse such order.

Discretion of Ordinary.

§ 1859. The receipt of the foreign guardian under such order shall be a sufficient voucher for the trustee in Georgia.

Receipt.

Article 1.—Indented Servants and Apprentices.

Enforcing order. § 1860. The Court may enforce such order in the same manner as provided in cases of settlements made with guardians, and the foreign guardian, after such order, may sue for the property of his ward in the possession of any person in any Court of law or equity in this State.

Removal of guardian and ward, etc. § 1861. If any guardian appointed in this State shall desire to remove to another State and carry his ward with him, before removing the person or property of his ward, he shall, in the proper Court of his intended domicil, first comply with all the conditions required in the preceding Sections of a foreign guardian, and obtain the order of the Ordinary consenting to such removal.

CHAPTER IV.

MASTER AND SERVANT.

ARTICLE 1.—*Indented Servants and Apprentices.*ARTICLE 2.—*Laborers in Factories.*

ARTICLE I.

INDENTED SERVANTS AND APPRENTICES

SECTION.

- 1862. Indenture of service.
- 1863. Right of master.
- 1864. Right of servant.
- 1865. Minors bound by parent.
- 1866. By County Judge or Ordinary.
- 1867. Mode of indenture.
- 1868. Where filed and recorded.

SECTION.

- 1869. Minor need not sign.
- 1870. Duties of master.
- 1871. Controversies—where tried.
- 1872. Relation—how dissolved.
- 1873. Allowance to apprentice.
- 1874. Master's right of action.

Indenture service. § 1862. Any person of full age may bind himself for a valuable consideration to any citizen of this State for a limited number of years, not exceeding five; [*provided*, the contract of apprenticeship shall be made in duplicate, and witnessed in the same manner as deeds: the original shall be kept by the master, and the duplicate shall be filed and recorded either in the office of the Judge of the County Court or in the Ordinary's office.] (a)

(a) Acts of 1866, p. 8.

Article 1.—Indented Servants and Apprentices.

§ 1863. The master shall be entitled to his reasonable labor under his direction, and shall have a right of action against any other person who, with notice, shall employ such servant. If the indented servant shall have been imported by the master, he shall recover damages at least equal to double the amount per month for which such indented person contracted to serve.

Right of master.

Damages.

§ 1864. Such indented person is entitled to maintenance, protection, and humane treatment; and upon proof to the Court in which the contract was filed and recorded that he is denied either of them, or the consideration of his indenture, the Court shall pass an order declaring the indenture revoked and annulled.

Rights of servants.

§ 1865. [All minors may, by whichever parent has the legal control of them, be bound out as apprentices to any respectable person until they attain the age of twenty-one years, or for a shorter period.] (a)

Parents may bind out minor children.

§ 1866. [It shall be the duty of the Judge of the County Court, or the Ordinary, to bind out in like manner all minors whose parents are dead, or whose parents reside out of the County, the profits of whose estates are insufficient for their support and maintenance; also, all minors whose parents, from age, infirmity, or poverty, are unable to support them.] (a)

Judge of Co. Court or Ordinary may bind out in certain cases.

§ 1867. [Indentures of apprenticeship shall be made in duplicate, and witnessed in the same manner as deeds, the original of which shall be kept by the master.] (a)

Indentures—how made, witnessed and kept.

§ 1868. [The duplicates shall be filed and recorded either in the office of the Judge of the County Court, or in the Ordinary's office.] (a)

§ 1869. [It shall not be necessary for the apprentice to sign the indenture of apprenticeship.] (a)

§ 1870. [It shall be the duty of the master to teach the apprentice the business of husbandry, house service, or some other useful trade or occupation, which shall be specified in the instrument of apprenticeship; shall furnish him with protection, wholesome food, suitable clothing, and necessary medicine and medical attendance; shall teach him habits of industry, honesty, and morality; shall cause him to be taught to read English; and shall govern him with humanity, using only the same degree of force to compel his obedience as a father may use with his minor child.] (a)

the master shall teach, etc.

Article 1.—Indented Servants and Apprentices.

§ 1871. [In all controversies between a master and his apprentice, pending the existence of the relation, the Judge of the County Court, or the Ordinary, may exercise jurisdiction, and on complaint of either party, and notice to the other, may cause justice to be done in a summary manner. If the master be in default, he shall be fined, at the discretion of the Court, not exceeding fifty dollars; and if the apprentice, the Court may order such correction as the circumstances may demand, not extending to cruelty.] (a)

Jurisdiction of Judge of Co. Court or Ordinary.

§ 1872. [By consent of the parties, the Judge of the County Court, or the Ordinary, may dissolve the relation at any time; and on the death of the master, the said Judge, or Ordinary, may either dissolve it, or substitute in place of the deceased his legal representative, or some member of his family; in which event, the person substituted, by filing a written acceptance, shall thenceforth have all the rights, and be bound for all the duties of the original master. Dissolution by consent, or for the death of the master, shall be subject to the sound discretion of the Judge of the County Court, or of the Ordinary, as also shall be the selection of a successor to the master as above mentioned; but if no successor be designated, and his acceptance filed within three months after the death of the master, then the relation shall no longer exist. The Judge of the County Court, or the Ordinary, may also dissolve the relation, at the instance of the master, for gross misconduct in the apprentice; or at the instance of the apprentice, or any friend of his, for cruelty in the master, or for failure to furnish food, clothing, medicine, or medical attendance, or for jeopardy of the good morals of the apprentice, by reason of the master's depraved conduct.] (a)

Relation —how dissolved or changed.

At instance of master, may dissolve

At instance of apprentice, may dissolve.

Allowance at expiration of service.

Master offering less than \$100.

§ 1873. [To the master shall belong the proceeds of the apprentice's labor; but at the expiration of his term of service a faithful apprentice shall be entitled to a small allowance from the master with which to begin life; the amount to be left, in the first instance, to the master's generosity. If the master offer less than one hundred dollars the apprentice may decline it, and cite the master before the Judge of the County Court, or the Ordinary; and after hearing both parties and their witnesses, if any, the said Judge, or the Ordinary, shall fix the sum to be paid, increasing or diminishing the amount offered, according to the

Article 2.—Laborers in Factories.

merits of the apprentice, the means of the master, and the length and fidelity of the service.] (a)

§ 1874. [The master shall have a right of action against any person employing his apprentice with notice of the fact, and the damages recovered shall not be less than twenty-five dollars.] (a)

Right of action against person employing apprentice.

ARTICLE II.

LABORERS IN FACTORIES.

SECTION.

1875. Hours of labor.

SECTION.

1876. Corporal punishment.

§ 1875. The hours of labor by all persons under twenty-one years of age, in all cotton, woolen, or other manufacturing establishments, or machine shops in this State, shall be from sunrise until sunset, the usual and customary times for meals being allowed from the same; and any contract made with such persons or their parents, guardians, or others, whereby a longer time for labor is agreed upon or provided for, shall be null and void, so far as relates to the enforcement of said contracts against such laborers.

Hours of labor.
Contract for more void.

§ 1876. No boss or other superior in such establishments shall inflict corporal punishment upon such minor laborers; and the owners of such factory or machine shop shall be directly liable for all such conduct on the part of their employees; and such minor may sue in his own name for damages for such conduct, and the recovery shall be his own property, and not belong to his parents.

Corporal punishment.

(a) Acts of 1865-6, pp. 6, 7, 8.

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TITLE III.

OF RELATIONS ARISING FROM OTHER CONTRACTS.

CHAPTER 1.—*Of Partnership.*CHAPTER 2.—*Of Debtor and Creditor.*CHAPTER 3.—*Of Bailments.*CHAPTER 4.—*Of Principal and Surety.*CHAPTER 5.—*Of Principal and Agent.*

CHAPTER I.

OF PARTNERSHIP.

ARTICLE 1.—*General Principles.*ARTICLE 2.—*Rights and Liabilities of Partners among themselves.*ARTICLE 3.—*Rights and Liabilities as to Third Persons.*ARTICLE 4.—*Limited Partnership.*

ARTICLE I.

GENERAL PRINCIPLES.

SECTION.

- 1877. How created.
- 1878. Extent of partnership.
- 1879. Open and dormant partner.
- 1880. What constitutes a partnership.
- 1881. Time of commencement.
- 1882. Death of partner, etc.
- 1883. Duration and dissolution.

SECTION.

- 1884. How it is dissolved.
- 1885. Notice of dissolution.
- 1886. Effect of dissolution.
- 1887. False partner.
- 1888. Denial by defendant.
- 1889. Suits by and against.
- 1890. Executory bond.

§ 1877. A partnership may be created either by written or parol contract, or it may arise from a joint ownership, use and enjoyment of the profits of undivided property, real or personal.

§ 1878. As among partners, the extent of the partnership is determined by the contract and their several interests. As to third persons, all are liable not only to the extent of their interest in the partnership property, but also to the whole extent of their separate property.

Article 1.—Partnership—General Principles.

§ 1879. An ostensible partner is one whose name appears to the world as such, and he is bound, though he have no interest in the firm. A dormant or secret partner is one whose connection with the firm is really or professedly concealed from the world.

Open partner.

Dormant partner.

§ 1880. A joint interest in the partnership property, or a joint interest in the profits and losses of the business, constitutes a partnership as to third persons. A common interest in profits alone does not.

What constitutes a partnership.

§ 1881. If no time is specified for the commencement of the partnership, it commences immediately.

Time of commencement.

§ 1882. If the contract specifies the term for which the partnership is formed, it will continue for that time, or till the death of one partner. If it is desired to continue, notwithstanding the death of a partner, it must be so specified.

Death of a partner as it affects continuance.

§ 1883. If there is no agreement as to the time of continuance, the partnership is at will, and may be dissolved at any time by any partner on giving three months' notice to his co-partners.

Duration and dissolution.

§ 1884. Every partnership is dissolved at any time by the mutual consent of the parties, by the death, insanity, or conviction for felony of one of the parties, by the marriage of a *feme sole* partner, by the extinction of the business for which it was formed, or by such misconduct of either partner as will justify a Court of Equity to decree a dissolution.

How it is dissolved.

§ 1885. The dissolution of a partnership by the retiring of an ostensible partner must be made known to creditors and to the world. By the retiring of a dormant partner, it must be made known to all who had knowledge of his connection with the firm.

Notice of dissolution.

§ 1886. A dissolution puts an end to all the powers and rights resulting from the partnership to the partners, except for the purpose of a general account and winding up the business. As to third persons, it absolves the partners from all liability for future contracts and transactions, but not for the transactions that are past.

Effect of dissolution.

§ 1887. No partnership may lawfully insert in their firm name or style the name of any individual not actually a co-partner, nor continue in such firm name or style the name of a retired partner. And each member of a firm violating this provision shall forfeit the sum of one hundred dollars for every day's violation, to be recovered by any person who may prosecute for the same.

False partner.

§ 1888. Partners suing or being sued in their firm name, the

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Article 2.—Rights and Liabilities of Partners among themselves.

Denial by partnership need not be proved unless denied by the defendant, defendant. on oath, upon plea in abatement filed.

Suits by § 1889. Judgments may be entered up and execution issue in and against. the name of the firm or against a firm. And service of process on one partner with a return of “*non est inventus*” as to the others, shall authorize a judgment against the firm binding all of the firm assets and the individual property of the one served.

§ 1890. In all legal proceedings, wherein it becomes necessary for partners to give bond, any one of the partners may execute such bond in the firm name.

§ 3202.
Executory bond.

ARTICLE II.

RIGHTS AND LIABILITIES OF PARTNERS AMONG THEMSELVES.

SECTION.

- 1891. Interest of each.
- 1892. Insolvent partner.
- 1893. Good faith *inter se*.
- 1894. Power of each partner.

SECTION.

- 1895. Introducing new partner.
- 1896. Power of majority.
- 1897. Surviving partner.

Interest of each. § 1891. Unless otherwise provided in the agreement, partners are equally interested in all the stock or property brought into the business, it matters not by which partner—are equally entitled to share the profits, and equally bound to pay the losses.

Contribution in case of insolvent partner. § 1892. If one of several partners proves to be insolvent, each partner is bound to contribute according to his interest to sustain the *pro rata* loss of such insolvent in the debts of the firm.

Good faith *inter se*. § 1893. The strictest good faith is required among partners, and that which would not amount to fraud as to third persons, may be such a violation of this faith as to justify a Court of Equity to compel a partner to give up any advantage thus obtained.

Power of each partner. § 1894. Every partner has a right to examine into the affairs of the firm, and, unless otherwise agreed to, have joint possession of its effects, to collect and apply its assets, to contract or otherwise bind the firm in matters connected with its business, and to execute any writing or bond in the course of the business; at no time transgressing the privileges of other partners or seeking in bad faith to evade or violate their wishes.

Introducing new partner. § 1895. No partner by assigning his interest or otherwise, can introduce a new partner without the consent of the others, unless such power is reserved in the contract.

Article 3.—Rights and Liabilities of Partners as to third persons.

§ 1896. Unless otherwise stipulated, a majority of the partners must control on any question within the scope of the partnership business; but outside of such business, any partner may veto the use of the partnership assets. Power of majority.

§ 1897. The surviving partner, in case of death, has the right to control the assets of the firm to the exclusion of the legal representatives of a deceased partner, and he is primarily liable to the creditors of the firm for their debts. Surviving partner.

ARTICLE III.

RIGHTS AND LIABILITIES OF PARTNERS AS TO THIRD PERSONS.

SECTION.

- 1898. Secret stipulations.
- 1899. Bound by acts of partner.
- 1900. Duty of agent.
- 1901. Matters outside of partnership.
- 1902. Lending money to partner.
- 1903. Purchasing from partner.

SECTION.

- 1904. Endorsement, etc.
- 1905. Liability from fraud of one partner.
- 1906. For torts of partner.
- 1907. Power after dissolution.
- 1908. Disposition of assets, etc.
- 1909. Garnishment on partner's interest.

§ 1898. Third persons are bound by no stipulations among the partners themselves, unless actual notice of such stipulation be proven prior to their action. Secret stipulation.

§ 1899. All the partners are bound by the acts of any one, within the legitimate business of the partnership, until dissolution or the commencement of legal process for that purpose, or express notice of dissent to the person about to be contracted with. Bound by acts of partner.
Effect of notice.

§ 1900. An agent of the partnership is generally bound to obey each partner. If contradictory instructions are given by different partners, he is not bound to obey either, but should act for the best interest of the partnership. Duty of agent.

§ 1901. Third persons acting with a partner in a matter not legitimately connected with the partnership, have no right against the firm or any other member. Matters outside of partnership.

§ 1902. A person lending money to a partner for the firm is not bound to see to its application, but if he knows, or has reasonable grounds to suspect that it is intended to be applied to other purposes than the business of the firm, he can not recover it from the partnership. Lending money to partner.

§ 1903. Third persons acquire no title to partnership assets by purchase from one member, when notice or a reasonable ground of Purchasing from partner

Article 3.—Rights and Liabilities of Partners as to third persons.

suspicion is known to them that the partner is misapplying, or seeks to misapply such assets.

§ 1904. A guaranty or an accommodation endorsement is not within the legitimate business of ordinary partnership.

Endorsements, etc.

Liability for fraud of one partner.

§ 1905. All the partners are responsible to innocent third persons for damages arising from the fraud of one partner in matters relating to the partnership.

For torts of partner.

Of servant.

§ 1906. Partners are not responsible for torts committed by a co-partner. For the negligence or torts of their agent or servant they are responsible under the like rules with individuals.

Power after dissolution.

§ 1907. After dissolution, a partner has no power to bind the firm by a new contract, or to revive one already for any cause extinct, nor to renew or continue an existing liability, nor change its dignity or its nature.

Disposition of assets among creditors.

§ 1908. When a partnership is insolvent, and one of the partners is deceased insolvent, the creditors of the partnership, in equal degree with individual creditors, can not claim to share in the individual assets of the deceased partner until the individual creditors shall have first received upon their debts such a per centage from the individual assets as such partnership creditors have received from the partnership assets.

Garnishment on partner's interest.

§ 1909. The interest of a partner in the partnership assets may be reached by a judgment creditor by process of garnishment served on the firm, and shall not be subject to levy and sale. The lien on such interest shall attach from the date of the judgment against the partner.

ARTICLE IV.

LIMITED PARTNERSHIP.

SECTION.

- 1910. Limited partnerships.
- 1911. How constituted.
- 1912. Business—by whom conducted.
- 1913. Certificate—specification of.
- 1914. Acknowledgment of.
- 1915. Certificate and powers—how filed.
- 1916. Affidavit of general partners.
- 1917. Informal partnerships.
- 1918. Publication.
- 1919. Evidence of publication.
- 1920. Renewal or continuance of.
- 1921. Dissolution of.

SECTION.

- 1922. Names of the firm.
- 1923. Suits—how brought.
- 1924. Stock not to be withdrawn.
- 1925. Interest and profits.
- 1926. Special partner, etc.
- 1927. Liability of general partners.
- 1928. Guilty of fraud—how punished.
- 1929. Fraudulent assignments.
- 1930. General or special partners.
- 1931. Liability of special partners.
- 1932. Not to claim credit—when.
- 1933. Dissolution—how effected.

§ 1910. Limited partnerships for the transaction of any mer-

Article 4.—Limited Partnership.

cantile, commercial, mechanical, manufacturing, mining, or agricultural business within this State, may be formed by two or more persons upon the terms, with the rights and powers and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance.

By whom
formed—for
what pur-
poses.

§ 1911. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners, and of one or more persons who shall contribute in actual cash a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for debts of the partnership beyond the fund so contributed by him, or them, to the capital, except as hereinafter provided.

How con-
stituted.

§ 1912. The general partners only shall be authorized to transact business, and to sign for the partnership, and to bind the same.

Business—
by whom
transacted.

§ 1913. Persons desirous of forming such partnership shall make, and severally sign by themselves, or attorney in fact, a certificate which shall contain—

Specifica-
tions of cer-
tificate.

1. The name of the firm under which such partnership is to be conducted.

2. The general nature of the business intended to be transacted.

3. The names of all the general and special partners inserted therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence, and the period at which it shall terminate; and when made by such attorney in fact, the power of the attorney duly authenticated shall be recorded along with such certificate.

§ 1914. The certificates shall be acknowledged by the several persons signing the same, or their attorney in fact, before a Judge of the Superior or Inferior Court, or a Justice of the Peace, or Notary Public, and such acknowledgment shall be certified by the officer before whom the same is made.

How ac-
knowledged.

§ 1915. The certificate and power of attorney in fact, so acknowledged and certified, shall be filed in the office of the Clerk of the Superior Court of the County in which the principal place of business of the partnership shall be situated, and also be re-

Certificates
and powers
of attorneys
—when and
where filed.

Article 4.—Limited Partnership.

corded by him at large in a book to be kept for that purpose open to public inspection. If the partnership shall have places of business situated in different Counties, a transcript of the certificate, and power of attorney in fact, and of acknowledgment thereof, duly certified by the Clerk in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner in the office of the Clerk of the Superior Court in every such County; and the Clerk for each and every registry required by this act shall be entitled to the sum of five dollars.

Affidavit.

§ 1916. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit or affidavits of the several general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash, and a certified copy of such certificate, power of attorney, and affidavits, shall be evidence in all Courts and places whatever.

Informal
partnerships

§ 1917. No such partnership shall be deemed to have been formed until such a certificate as is herein mentioned shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate, or affidavit, or if such partnership business be commenced before such certificate or affidavit is filed, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

How published.

§ 1918. The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry, in one newspaper in the County in which the place of business is situated, and in one newspaper in the city of Milledgeville. If no newspaper should be published in the County in which the business is to be transacted, the notice shall be published in all the newspapers in the city of Milledgeville, as before required; and if such publication be not made within two months from the filing of such certificate and affidavit, the partnership shall be deemed general.

Evidence of
publication.

§ 1919. The affidavits of the publication of such notice by the printers, publishers or editors of the newspapers in which the same shall be published, may be filed in the office of the Clerk of the Superior Court in which the certificate has been filed and shall be evidence of the facts therein contained.

Article 4.—Limited Partnerships.

§ 1920. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Renewal or
continuance
of partner-
ship.

§ 1921. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership according to the provision of the last Section.

Alterations
of names,
etc., deemed
a dissolution

§ 1922. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, he shall be deemed a general partner.

Name
firm.

§ 1923. Suits to be brought by any partnership to be formed under this Code, shall be in the name or names of the general partners only, and suits against such partnership shall be brought against the general partners only, except in cases where the special partner shall be rendered liable as general partners, in which cases suits may be brought against all the partners jointly or severally, or any one or more of the special partners may be sued in the same action with the general partners.

Suits.

§ 1924. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits, but shall not be liable for any debts previously contracted by the general partners.

Capital
stock not to
be with-
drawn.

§ 1925. If it shall appear that, by the payment of interest or

Article 4.—Limited Partnerships.

Interest
and profits,
etc.

profits to any special partner, the original capital has been reduced, or the firm shall be unable to pay its debts, the partner receiving the same shall be bound to restore the interest or profits received by him necessary to make good his original share of the original stock.

Privileges
and liabilities
of special
partners

§ 1926. A special partner may, at any time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner; but he may act as the attorney or counselor at law, or in equity, for the partnership, without being liable to become a general partner.

Liability of
general part-
ners.

§ 1927. The general partners shall be liable to account to each other, and to the special partners for their management of the business of the firm, both in law and equity, as other partners are now by law and equity.

Partners
guilty of
fraud, etc.

§ 1928. Every partner who shall be guilty of any fraud in the affairs or business of the partnership, shall be liable, civilly to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the Superior Court, by which he shall be tried.

Fraudulent
assignments
invalid.

§ 1929. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership under the like circumstances, and with the like intent, shall be void as against the creditors of such partnership.

By gener-
al or special
partners.

§ 1930. Every such sale, assignment or transfer of any of the property or effects of a general or special partner, who may have become liable as a general partner, made by such general or special partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intention of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership; every

Article 4.—Limited Partnerships.

judgment confessed, lien created, or security given by any such partner under the like circumstances, and with the like intent, shall be void as against the creditors of the partnership.

§ 1931. Any special partner who shall violate any provision of the two last preceding Sections, or who shall concur in, or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner. Liability of special partners, etc.

§ 1932. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied. Special partners, etc.

§ 1933. No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its renewal, until a notice of such intended dissolution shall have been filed and recorded in the Clerk's office in which the original certificate was recorded, and published at least once a week for four weeks in a newspaper printed in each of the Counties where the partnership has places of business; but if no newspaper be printed in such Counties, then the notice shall be published for four weeks in all the newspapers in the city of Milledgeville, which notice shall be signed by all the partners, or their representatives; *provided*, that nothing herein contained shall be so construed as to affect the collection of any demand against either of the special partners which may have been contracted previously to the commencement of such special partnership. Dissolution — how effected.

CHAPTER II.

DEBTOR AND CREDITOR.

ARTICLE 1.—*General Principles.*

ARTICLE 2.—*Acts Void Against Creditors.*

ARTICLE 3.—*Mortgages and other Liens.*

ARTICLE 4.—*Insolvent Debtors.*

ARTICLE 5.—*Interest and Usury.*

Article 1.—Debtor and Creditor—General Principles.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION.

1934. Relation of debtor and creditor.
 1935. Rights of Creditors favored.
 1936. Equitable assets.
 1937. Attacking judgments.

SECTION.

1938. Pursuing two remedies.
 1939. Compulsory election.
 1940. Obligations in writing.
 1941. Exceptions.

§ 1934. Whenever one person, by contract or by law, is liable and bound to pay to another an amount of money, certain or uncertain, the relation of debtor and creditor exists between them.

§ 1935. The rights of creditors should be favored by the Courts, and every remedy and facility afforded them to detect, defeat and annul any effort to defraud them of their just rights.

§ 1936. Courts of Equity should assist creditors in reaching equitable assets in every case where to refuse interference would jeopard the collection of their debts.

§ 1937. Creditors may attack as fraudulent a judgment or conveyance, or any other arrangement interfering with their rights, either in law or in equity.

§ 1938. The creditor can not pursue the person and property of the debtor at the same time, except in cases specially provided for; but the process last sued out shall be void.

§ 1939. As among themselves, creditors must so prosecute their own rights as not unnecessarily to jeopard the rights of others; hence, a creditor having a lien on two funds of the debtor equally accessible to him, will be compelled to pursue the one on which other creditors have no lien.

§ 1940. To make the following obligations binding on the promiser the promise must be in writing, signed by the party to be charged therewith, or some person by him lawfully authorized—viz :

1. A promise by an executor, administrator, guardian, or trustee to answer damages out of his own estate.

2. A promise to answer for the debt, default, or miscarriage of another.

3. Any agreement made upon consideration of marriage, except marriage articles as herein before provided.

4. Any contract for sale of lands, or any interest in, or concerning them.

Article 2.—Acts Void against Creditors.

5. Any agreement (except contracts with overseers) that is not to be performed within one year from the making thereof. Agreements not to be performed in a year.

6. Any promise to revive a debt barred by the acts of limitation. New promise to revive a debt.

7. Any contract for the sale of goods, wares, and merchandise in existence, or not in esse, to the amount of fifty dollars or more, except the buyer shall accept part of the goods sold and actually receive the same, or give something in earnest to bind the bargain, or in part payment. Sale of goods over fifty dollars.

§ 1941. The foregoing Section does not extend to the following cases—viz :

1. When the contract has been fully executed. Executed contracts.

2. Where there has been performance on one side, accepted by the other in accordance with the contract. Performance on one side.

3. Where there has been such part performance of the contract as would render it a fraud of the party refusing to comply if the Court did not compel a performance. Part performance amounting to fraud.

ARTICLE II.

ACTS VOID AGAINST CREDITORS.

SECTION.

1942. Void acts.

SECTION.

1943. Legal preference.

§ 1942. The following acts by debtors shall be fraudulent in law against creditors, and as to them null and void—viz :

1. [Every assignment or transfer by a debtor, insolvent at the time, of real or personal property, or choses in action of any description to any person, either in trust or for the benefit of, or in behalf of creditors, where any trust or benefit is reserved to the assignor or any person for him.] (a). Assignment void when.

2. Every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment, and execution, or contract of any description, had or made with intention to delay or defraud creditors, and such intention known to the party taking; a *bona fide* transaction on a valuable consideration, and without notice or grounds for reasonable suspicion, shall be valid. Conveyance to delay.

3. Every voluntary deed or conveyance, not for a valuable con-

(a) Acts of 1865-6, p. 29.

Section 1.—Mortgages.

Voluntary conveyance. sideration, made by a debtor insolvent at the time of such conveyance.

Legal preference. § 1943. A debtor may prefer one creditor to another, and to that end he may *bona fide* give a lien by mortgage or other legal means, or he may sell in payment of the debt, or he may transfer negotiable papers as collateral security, the surplus in such cases not being reserved for his own benefit or that of any other favored creditor, to the exclusion of other creditors.

ARTICLE III.

OF MORTGAGES AND OTHER LIENS.

SECTION 1.—*Mortgages.*

SECTION 2.—*Other Liens.*

SECTION I.

MORTGAGES.

SECTION.

- 1944. What is a mortgage, etc.
- 1945. Form and execution.
- 1946. Registry.
- 1947. Effect of failure to record.
- 1948. How admitted in evidence.
- 1949. Defective record.
- 1950. Record not in time.
- 1951. Probate of record.

SECTION.

- 1952. Tacking.
- 1953. Mortgage to sureties.
- 1954. Redemption in ten years.
- 1955. Debts due by installments.
- 1956. Several distinct mortgages.
- 1957. Claiming proceeds of sale.
- 1958. Purchasers giving bond, etc.

§ 1944. A mortgage in this State is only a security for a debt, and passes no title. It may embrace all property in possession, or to which the mortgager has the right of possession at the time, or may cover a stock of goods, or other things in bulk but changing in specifics, in which case the lien is lost on all articles disposed of by the mortgager up to the time of foreclosure, and attaches on the purchases made to supply their place.

§ 1945. No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property upon which it is to take effect. It must be executed in the presence of, and attested by, or proved before a Notary Public or Justice of any

What is a mortgage, etc.

Form and execution.

Section 1.—Mortgages.

Court in this State, or a Clerk of the Superior Court, (and in case of real property by one other witness,) and recorded within three months from its date.

§ 1946. Mortgages on realty must be recorded in the County Registry. where the land lies; on personalty, in the County where the mortgager resided at the time of its execution, if a resident of this State. If a non-resident, then in the County where the mortgaged property is. If a mortgage be executed on personalty, not within the limits of this State, and such property is afterwards brought within the State, the mortgage shall be recorded according to the above rules within six months after such property is so brought in.

§ 1947. Mortgages not recorded within the time required remain valid as against the mortgager, but are postponed to all other liens created or obtained, or purchases made prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or a purchaser has the like notice, then the lien of the older mortgage shall be held good against them. Effect of failure to record.

§ 1948. Mortgages, when duly executed and recorded, shall be admitted in evidence under the same rules as registered deeds. How admitted in evidence.

§ 1949. A mortgage recorded in an improper office, or without due attestation or probate, or so defectively recorded as not to give notice to a prudent inquirer, shall not be held notice to subsequent *bona fide* purchasers or younger liens. A mere formal mistake in the record shall not vitiate it. Defective record.

§ 1950. The due record of a mortgage, though not made in the time prescribed, is notice from the time of record to all the world. Record not in time.

§ 1951. All the rules prescribed for the probate of deeds to land, where the witnesses are dead, insane, or removed from the State, or to the acknowledgment before or attestation by consuls or commissioners, shall apply to the probate of mortgages. Probate for record.

§ 1952. There shall be no tacking of mortgages in this State. Tacking.

§ 1953. Mortgages may be taken by sureties and guarantees to indemnify them against loss. Mortgage to sureties.

§ 1954. If the possession of the property is given to the mortgagee, the mortgager may redeem at any time within ten years from the last recognition by the mortgagee of such right of redemption. Redemption in ten years.

Section 1.—Mortgages.

Debts due by install-
ments. § 1955. If the mortgage is given to secure several debts falling due at different times, the mortgagee may foreclose when the first becomes due, and the Court will control the surplus so as to protect the lien created for the debts not due.

Several distinct mort-
gages. § 1956. So, if there be several mortgages of equal date or embraced in the same mortgage, and one forecloses, the Court will control the proceeds of the sale to distribute to the several mortgagees according to their claims.

Claiming proceeds of
sales. § 1957. Property mortgaged may be sold under other process, subject to the lien of the mortgage. If the mortgage is foreclosed, the mortgagee may place his execution in the hands of the officer of the law making the sale, and cause the title, unincumbered, to be sold, and claim the proceeds according to the date of his lien.

Purchas-
ers giving
bond to re-
spond to lien § 1958. Purchasers at public sales of property subject to the lien of a mortgage, shall give bond and security in double the value thereof to the officer making the sale, conditioned not to remove the property out of the State, and for its forthcoming to answer to the said lien; *provided*, the mortgagee, or his agent, files with the officer, prior to the sale, an affidavit of the amount due on such mortgage, and that he apprehends the loss of said property unless such bond be taken. On failure to give such bond, the property shall be resold at the risk of the purchaser.

SECTION II.

OTHER LIENS.

SECTION.

- 1959. Lien of mechanics.
- 1960. Notice of other liens.
- 1961. Lien attaching to proceeds of sale.
- 1962. Trial of issue.
- 1963. Proceedings on part of mechanic.
- 1964. How sued.
- 1965. Effect of possession.
- 1966. Lien of machinists.
- 1967. Lien of other mechanics.
- 1968. Lien on steamboats.
- 1969. Mode of enforcement.
- 1970. Issue—how made.
- 1971. Replevy.

SECTION.

- 1972. Payment of amount due.
- 1973. Lien of mill-wrights and machinists
- 1974. Stone-cutters, etc.
- 1975. Other liens—how enforced.
- 1976. Lien of attorney, factor, etc.
- 1977. Lien on crops.
- 1978. Vendor's lien abolished.
- 1979. Attorney's lien—its extent and effect
- 1980. Settlement by parties.
- 1981. Lien by by-laws.
- 1982. Oldest lien preferred.
- 1983. Lien under charters.
- 1984. Lien on rules absolute.

§ 1959. All mechanics who have taken no personal security therefor, shall have a lien on every house, [or other property,] (a)

(a) Acts of 1866, p. 22.

Section 2.—Other Liens.

and the premises to which it shall be attached for work done or materials furnished in building or repairing such house, [or other property;] (a) which lien shall be superior in dignity and of higher claim than any other incumbrance, without regard to date. And such lien upon the improvements made by the mechanic shall attach to them without regard to the title.

Lien of mechanics.

§ 1960. Any person holding a lien on such premises or house may give notice to any mechanic about to build or repair, before the same is commenced, not to proceed therewith. After such notice the mechanic's lien shall be postponed to that of the person giving notice.

Notice of other liens.

§ 1961. If any house or premises [or other property] (a) on which there is a mechanic's lien, be sold by any process from the Courts of this State, the purchaser shall obtain the full title and the lien shall attach to the proceeds of the sale, upon notice by the mechanic to the officer to hold the money until the next session of the Superior Court for that purpose.

Lien attaching to proceeds of sale.

§ 1962. If the claim of lien be disputed by either plaintiff or defendant in the process or decree on which the money was raised, an issue shall be ordered and tried as in other causes, and if it be determined against the claimant, he shall pay such damages, not exceeding twenty per cent., as the jury may assess, with interest from the date of the notice to retain, and costs.

Trial of issue.

§ 1963. The following provisions must be complied with to make good the mechanic's lien, and on failure of either, the lien shall cease—viz :

Proceedings on part of mechanic.

1. A substantial compliance by the mechanic with his contract for building or repairing, or materials furnished.

2. The recording of his claim of lien in the Clerk's office of the County where the land lies, in substance as follows: "A. B., a mechanic, claims a lien on the house, and premises on which it is erected, of C. D. (describing the premises) (for building, repairing, or whatever the claim may be)," within three months from the time the same is completed.

3. The commencement of an action for the recovery of the amount of his claim within twelve months from the time the same shall become due.

§ 1964. In declaring for such debt the mechanic must set forth

Section 2.—Other Liens.

How sued. his lien and the premises on which he claims it; and if the lien is allowed, the verdict shall set it forth, and the judgment and execution be awarded accordingly.

Effect of § 1965. The delivery of possession by the mechanic shall not possession. affect his lien.

Machinist's § 1966. [Any machinist, who may furnish or put up, in any lien. County in this State, any steam mill or other machinery, or who may repair the same, shall be entitled to the same lien on such machinery, and the premises to which the same may be attached, and may enforce such lien in the same manner and with like benefits, privileges, and restrictions as those which apply to mechanics.] (a)

Lien of other § 1967. All mechanics shall have a lien on all personal property, mechanics. manufactured or repaired by them, to the extent of the work done and the materials furnished; but such lien shall cease on the delivery of possession to the owner.

Lien on § 1968. Every officer and employee, or guardian of any employee, steamboats. on any steamboat or other water craft, engaged in the navigation of any river within the border or forming the boundary of this State, shall have a lien of the highest dignity upon the said boat or craft for any debt, dues, wages, or demands, that he may have against the owner or lessee of such boat or craft for personal services in connection with the same, or for wood or provisions furnished to the same.

Mode of en- § 1969. Such lien must be prosecuted and enforced in the fol- forcement. lowing manner in substance—viz:

1. There must be a demand on the owner, or agent, or lessee, for payment, and a refusal to pay; and such demand and refusal must be averred.

2. It must be prosecuted within one year after the debt becomes due.

3. The person prosecuting such lien, either for himself or as guardian, must make an affidavit before a Judge of the Superior or County Court of the County in which the boat or craft may then lay, upon the same arriving at the place of destination to which it has been freighted, showing all the facts necessary to constitute a lien under this Code and the amount claimed to be due. If the amount claimed is under fifty dollars, the application

Section 2.—Other Liens.

may be made to a Justice of the Peace, who may take all the other steps hereinafter prescribed as in other cases in his Court. [Upon such affidavit being filed, the Judge or Justice, as the case may be, shall grant an order requiring the Clerk of the Court of which he is a Judge or Justice to issue an execution instanter against the person owing the debt, and also against the boat or craft, for the amount sworn to and the costs; which execution, when issued, shall be levied, by any Sheriff of this State, on such boat or craft, under the same rules and regulations as other levies and sales under execution.] (a)

§ 1970. If the person defendant in such execution or any creditor of such defendant contests the amount or justice of the claim or the existence of such lien, he may file his affidavit of the fact, setting forth the grounds of such denial, which affidavit shall form an issue to be returned to the Court and tried as other causes.

Issue—how made.

§ 1971. The defendant may replevy the boat or craft by giving bond and security in double the amount claimed for the payment of the eventual condemnation money.

Replevy.

§ 1972. If only a part of the amount claimed is denied, the amount admitted to be due must be paid before the affidavit shall be received by the officer.

Payment of amount due.

§ 1973. All mill-wrights and builders of gold machines shall have a lien upon such mills and machines, of the same dignity as that given above to persons employed on steamboats, and the same may be enforced in the same way.

Lien of mill-wrights and machinists.

§ 1974. All stone-cutters and marble companies shall have a similar lien on the stone or marble cut and prepared by them, for their labor and expenses, and such lien may be enforced in a similar manner.

Lien of stone cutters and marble companies.

§ 1975. All persons having a lien on personalty under any law in this State may enforce the same in a similar manner, by complying with the requisitions prescribed above for persons employed on steamboats, the proceedings to be in the County where the property lies.

Other liens—how enforced.

§ 1976. The lien given by the common law to inn-keepers, pawnees, carriers and others upon goods taken requiring the stances (except the vendor's lien) are recognized next term why judgment enforced under the law of Georgia.

Failure to appear at Court.

(a) Errata Table of old cause be shown judgment not have the right to sur-

Section 2.—Other Liens.

§ 1977. [Factors and merchants shall have a lien upon the growing crops of farmers, for provisions, and commercial manures furnished, upon such terms as may be agreed upon by the parties; and such lien shall be enforced in the same way and manner as provided in this Code for the enforcement of liens against steamboats.] (a)

Lien
on growing
crops for
provisions,
etc.

Vendor's
lien abol-
ished.

§ 1978. The vendor's equitable lien for the purchase money of lands is abolished in this State.

Attorney's
lien—its ex-
tent and ef-
fect.

§ 1979. The attorney's lien shall attach for his fees and for a general balance on all sums collected by him, and upon all property recovered by his services, and shall be superior to all other liens thereon. In claim cases the attorney causing the levy and prosecuting the rights of the plaintiff in *fi. fa.* shall be entitled to his fees from the proceeds of the property condemned, although older liens may demand and recover the proceeds from the immediate client of such attorney.

Settlement
lien by parties.

§ 1980. Parties can not, by settlement between themselves, defeat the attorney of any lien or claim under contract with his client of which the opposite party had notice prior to the consummation of such settlement.

Lien by
by-laws.

§ 1981. The by-laws of a corporation may create a lien upon the shares or other property of the stockholders in favor of the company: such lien is binding upon the corporators themselves and upon all creditors giving credit with notice, or purchasers at public or private sale purchasing with notice.

Oldest lien
preferred.

§ 1982. When different persons hold a lien on the same property, and both declared to be of the same dignity, then the oldest lien shall have the preference.

Liens under
charters.

§ 1983. All liens created under the charters of incorporated companies are continued under this Code.

§ 1984. Rules absolute granted against defaulting Sheriffs, Constables, and other officers, under the various provisions of this Code, shall have a lien on their property from the date of their return or County similar to that of judgments obtained at the same term, then lay, upon the day when it has been returned. (a) Acts of 1866, p. 141. constitute a lien under the same. If the amount claimed.

(a) Acts

Section 1.—Insolvent Debtors—how Discharged.

ARTICLE IV.

INSOLVENT DEBTORS.

SECTION 1.—*How discharged.*SECTION 2.—*Prison bounds.*SECTION 3.—*Property exempt from sale.*

SECTION I.

HOW DISCHARGED.

SECTION.

- 1985. Debtors arrested, etc.
- 1986. By giving bond, etc.
- 1987. Notice to creditors.
- 1988. Schedule.
- 1989. Objections.
- 1990. Trial of issue.
- 1991. Verdict for objector.
- 1992. Oath to be taken.
- 1993. Effect of discharge.
- 1994. Perjury.
- 1995. Delivery of property.

SECTION.

- 1996. Disposition of property.
- 1997. Summary discharge.
- 1998. Oath in such case.
- 1999. Issue of fraud.
- 2000. Verification of issue.
- 2001. Immediate trial.
- 2002. Continuance.
- 2003. Oath of plaintiff.
- 2004. Bond of defendant.
- 2005. Verdict, etc.
- 2006. Judgment on bond.

§ 1985. Any debtor unable to pay his debts in full, whenever arrested on any process against his person, either mesne or final, may be relieved from imprisonment and future arrest for the same debts upon complying with the provisions of this Section.

Debtor arrested may be discharged.

§ 1986. He shall tender to the officer arresting him, a bond with good security, payable to the plaintiff in the process, and in double the amount of the debt, conditioned for his appearance at the next term after the expiration of twenty days of the Court, whence the process issued (unless the same be a Justice's Court, and in such case to the Inferior Court), then and there to stand to and abide by such proceedings as may be had relative to his application to take the oath prescribed. If at such term he fails to appear, and no sufficient excuse, to be judged of by the Court, be rendered for his absence, an order shall be taken requiring the party and his sureties to show cause at the next term why judgment should not be entered on said bond for the amount of the plaintiff's demand; and if no sufficient cause be shown judgment shall be so entered. The sureties shall not have the right to sur-

By giving bond, etc.

Failure to appear at Court.

Section 1.—Insolvent Debtors—how Discharged.

Surrender by sureties. render their principal after the first term, unless they satisfy the Court that they exercised strict diligence and failed to secure his attendance at that term, and to this end they shall have all the power given by law to special bail.

Notice to creditors. § 1987. The insolvent debtor shall give at least ten days' notice of his intended application to the arresting creditor, and may give the same notice to any other of his creditors, and the order of discharge shall set forth the names of all the notified creditors. A notice to an attorney of record shall be held sufficient notice to his client, and service on one of a firm shall be sufficient. If creditors reside out of the State, and their claims are not in suit, notice by publication, once a week for two months, shall be held sufficient to them.

Non-resident.

Schedule. § 1988. Every applicant, at least ten days before the session of the Court, shall file a schedule of all his real and personal estate, money, debts, credits and effects in possession, or in action, or to be enjoyed in future, whether the same be legal or equitable.

Objections. § 1989. Every creditor of such applicant may appear and file objections to the granting a discharge of the applicant on either of the following grounds :

1. A willful failure to include in the schedule, property which should be thus included ; the creditor specifying the property.

2. Any fraudulent attempt by the applicant to defeat the enforcement of the rights of creditors.

3. The loss by the applicant, at any species of gaming or lottery, within twelve months before his application, at any one time, the sum of one hundred dollars, or at different times the aggregate sum of three hundred dollars.

Trial of issue. § 1990. The objections filed shall constitute the issue, and shall be submitted to a jury as other causes, upon the trial of which the applicant may be sworn as a witness at the instance of the objector ; and if he refuses to answer any pertinent and legal questions, after notice from the Court, his application shall be refused.

Verdict for objector. § 1991. If the jury find a verdict sustaining the objection filed, the Court shall order the applicant into the custody of the Sheriff, to be safely kept as provided by law, until the debt of the arresting creditor is satisfied, unless the jury further find that the omission was not fraudulent ; in which last case, upon the delivery of the property, the defendant shall be allowed to take the oath.

Section 1.—Insolvent Debtors—how Discharged.

§ 1992. If no objections are filed, or if filed the verdict is in favor of the applicant, the Court shall cause the following oath to be entered on the minutes, and sworn to and subscribed by the applicant—viz :

Oath to be taken.

“I, A. B., do solemnly swear (or affirm, as the case may be,) in the presence of Almighty God, that I am not possessed of any estate, real or personal, money, debts, credits, or effects, legal or equitable (such property as is exempt by law from levy and sale alone excepted), other than is contained in the schedule filed by me, and that I have not, directly or indirectly, since my arrest or before, sold, leased, assigned, or otherwise disposed of or made over, in trust for myself, or others appointed by me, any part of my lands, estate, goods, stock, money, debts, or credits, whereby I have or expect any benefit or profit to myself, my wife, or my heirs. So help me God.”

§ 1993. After taking the oath, the debtor is discharged from arrest at any time at the instance of either of the notified creditors, and such arrest shall be false imprisonment; but his property remains subject to levy and sale for the satisfaction of his debts.

Effect of discharge.

§ 1994. Willful and fraudulent false swearing in taking the oath shall be perjury.

Perjury.

§ 1995. Before taking the oath the debtor shall deliver into the Court all his title papers to lands returned in the schedule, within his control; and also all notes, bonds, contracts, accounts, books, or other evidences of debts mentioned in the schedule, and shall deliver to the Sheriff all personal property mentioned therein. If the debtor be arrested in a County different from that whence the process issued, he may deliver any personal property returned in his schedule to the Sheriff of the County of his residence, who shall hold it subject to the order of the Court before whom the application is to be made.

Delivery of property.

In another County.

§ 1996. The Court may make such order for the sale, or other disposition of the property, or collection of the debts returned in the schedule, as in its judgment is most beneficial to the creditors, and to this end shall have all necessary power to enforce a faithful discharge of duty by those to whom such assets shall be entrusted.

Disposition of property.

§ 1997. [When a defendant is arrested as set forth in Section 1985, he may also, whether he gives the bond provided for in Section 1986 or not, file a schedule in the Clerk's office of the Infe-

Summary discharge.

Section 1.—Insolvent Debtors—how Discharged.

rior Court, and take the oath prescribed in Section 1992, by giving the plaintiff ten days' personal notice of his intention so to do.] (a)

§ 1998. [Three Justices of said Inferior Court shall be sufficient to administer the oath.] (a)

Issue of fraud. § 1999. [The plaintiff may tender an issue of fraud, in which he shall plainly set forth all the facts in the case which he expects to prove, and particularly describing the property which he may allege to have been left out of the schedule filed by the defendant.] (a)

Verification of issue. § 2000. [The plaintiff, his agent, or attorney shall be required to make affidavit that he has reason to believe that the facts set forth in the tender of an issue are true.] (a)

Issue tried at once. § 2001. [Upon this being done, the Justices of the Inferior Court may cause a jury to be summoned *instanter*, and proceed at once to the trial of the issue formed.] (a)

Continuance § 2002. [If either party shall make it appear to the Court that they are not ready for trial, the cause may be continued to such time as the Court in its discretion may deem necessary to enable the parties to prepare for the trial of the same; *provided*, that in no event, except for providential cause, shall a continuance be granted to the plaintiff more than one time, nor shall such continuance delay the case for more than thirty days from the day of the arrest.] (a)

Oath of plaintiff. § 2003. [If the continuance be at the instance of the plaintiff, he shall make oath that the facts which he has set forth in the issue tendered are true.] (a)

Bond of deft. § 2004. [When continued by the defendant, he shall give bond, as required by law, for his appearance to take the oath at the final termination of the cause.] (a)

Verdict, oath, and delivery of property. § 2005. [If the jury find for the defendant, he shall be permitted to take the oath on delivering to the Sheriff or his deputy all the property described in the schedule which he has filed.] (a)

Judgment on bond. § 2006. [Should the defendant fail to appear at the time appointed by the Court for the trial of the issue, the Court may enter up judgment on his appearance bond in favor of the plaintiff for the principal, interest and cost; *provided*, it does not appear that the defendant is absent from providential cause.] (a)

Section 2.—Prison Bounds.

SECTION II.

PRISON BOUNDS.

SECTION.

2007. Laid off.
2008. Plan of bounds.
2009. How to get benefit of.

SECTION.

2010. For six months.
2011. Sheriff—when surety.
2012. Jailor's fees.

§ 2007. The Sheriff of every County, under the direction of Laid off.
the Inferior Court, shall cause to be surveyed and laid off around
every jail, in such shape as may be most convenient, one hundred
acres of land, the boundaries of which shall be the limits of the
prison bounds, which limits may be re-surveyed and changed by
the Inferior Court at any time within their discretion.

§ 2008. A plan of such bounds shall be returned to the Clerks Plan of
bounds.
of each the Superior and Inferior Courts of the County, and en-
tered by them upon their minutes as a part of the record.

§ 2009. Any person arrested and committed to jail for debt How to get
benefit of.
may have the free use and enjoyment of his liberty within the
limits of such prison bounds, by tendering to the Sheriff a bond
with good security, payable to the plaintiff in the process, in
double the amount of the debt for which he is arrested, condi-
tioned that he will not pass over or leave the boundaries thus laid
off at any time without being legally discharged. Upon a viola-
tion of this condition, the creditor may commence an action upon
such bond instantly.

§ 2010. The privilege of prison bounds shall be extended to a For six
months.
debtor imprisoned for the term of six months, and no longer, upon
the same arrest.

§ 2011. If the Sheriff takes insufficient security, he shall be Sheriff—
when surety
held and bound as surety himself.

§ 2012. If the jailor diets the prisoner when within prison Jailor's fees.
bounds, he must look to him alone for his fees.

SECTION III.

PROPERTY EXEMPT FROM SALE.

SECTION.

2013. Property exempt from sale.
2014. Schedule—wife's privileges.
2015. Land—how laid off.
2016. Objections—how tried.
2017. Town property.

SECTION.

2018. Sale subject to incumbrance.
2019. Trespass by officer.
2020. Alienation and incumbrances.
2021. Settled on wife and children.
2022. Property of estates exempt—when.

Section 3.—Property Exempt from Sale.

Property
exempt from
sale.

§ 2013. The following property of every debtor, who is the head of a family, shall be exempt from levy and sale by virtue of any process whatever, under the laws of this State; nor shall any valid lien be created thereon, except in the manner hereinafter pointed out, but shall remain for the use and benefit of the family of the debtor:

1. Fifty acres of land, and five additional acres for each of his or her children under the age of sixteen years. This land shall include the dwelling-house, if the value of such house and improvements does not exceed the sum of two hundred dollars; *provided*, that none of the above land be within the limits of a city, town, or village, and does not include any cotton or wool factory, saw or grist mill, or any other machinery propelled by water or steam, the value of which exceeds the sum of two hundred dollars; *and provided, also*, that such land shall not derive its chief value from other cause than its adaption to agricultural purposes; or, in lieu of the above land, real estate in a city, town, or village, not exceeding five hundred dollars in value.

2. One farm horse or mule.

3. One cow and calf.

4. Ten head of hogs and fifty dollars' worth of provisions, and five dollars' worth additional for each child.

5. Beds, bedding, and common bedsteads sufficient for the family.

6. One loom, one spinning-wheel, and two pairs of cards, and one hundred pounds of lint cotton.

7. Common tools of trade of himself and his wife.

8. Equipment and arms of a militia soldier, and trooper's horse.

9. Ordinary cooking utensils and table crockery.

10. Wearing apparel of himself and family.

11. Family Bible, religious works, and school books.

12. Family portraits.

13. The library of a professional man, in actual practice or business, not exceeding three hundred dollars in value, and to be selected by himself.

Schedule—
wife's privilege.

§ 2014. Every debtor seeking the benefit of the act, or if he refuses, his wife, or any person acting as her next friend, shall make out a schedule and description of the property claimed by him to be exempt under this law, and return the same to the Clerk of the [County] (a) Court, who shall record the same in a book to be kept by him for that purpose.

Section 3.—Property Exempt from Sale.

§ 2015. Upon application by an insolvent debtor, it shall be the duty of the County Surveyor, or any other Surveyor, if there be no County Surveyor, to lay off the land allowed to his family under this law, and to make a plat of the same, which plat shall be returned to the Clerk of the [County] (a) Court, and recorded as before provided for schedules returned. Land—how laid off.

§ 2016. Should any creditor, for any cause, desire to dispute the propriety of the survey, or the value of the improvements, upon application to the [County] (a) Court, and notice to the debtor, the said Court may appoint three appraisers to view the survey, and to value the improvements, and on their return the said Court may direct the surveyor to make such alterations as shall, in the judgment of the Court, be conformable to law. Objections—how tried.

§ 2017. If the debtor owns town property exceeding in value the sum of five hundred dollars, and it can not be so divided as to give to his family that amount, he may give notice to the officer levying thereon, and when the proceeds of the sale are to be distributed the Court shall order five hundred dollars of the same to be invested, by some proper person, in a home for the family of the debtor, which shall be exempt, as if laid off under this law. Town property. Five hundred dollars of proceeds.

§ 2018. If, from any cause, the land exempt has not been laid off when the remainder is offered for sale, notice being given of the fact, the purchaser will buy subject to the incumbrance. Sale subject to incumbrance.

§ 2019. Any officer knowingly levying on or selling any property of a debtor exempt under this law, a schedule of which has been returned as required, is guilty of a trespass, and suit may be brought therefor, in the name of the wife or family of the debtor, and the recovery shall be for their exclusive use. Trespass by officer.

§ 2020. The debtor shall have no power to alienate or incumber the property exempt under this law; but the same may be sold by the debtor and his wife, if any, jointly, with the consent of the [County] (a) Court of the County, the proceeds to go to the use of the debtor's family. Alienation and incumbrances.

§ 2021. [The property exempt under this law shall be for the use of the wife or widow, and at her death or intermarriage, to be equally divided between the children of her former marriage then living.] (b) Settled on wife and children.

§ 2022. [The exemptions and protections contained in the nine

Article 5.—Interest and Usury.

Extended to insolvent estates. preceding Sections are hereby extended to intestate insolvent estates, in all cases wherein there is a widow or child of the deceased intestate living.] (b)

ARTICLE V.

INTEREST AND USURY.

SECTION.

- 2023. Lawful interest.
- 2024. Usury.
- 2025. Effect of usury.
- 2026. Back interest.
- 2027. *Lex loci*.

SECTION.

- 2028. Interest on judgment.
- 2029. Payment—how applied to interest.
- 2030. Interest on liquidated demands.
- 2031. On merchants' accounts.

Lawful interest. § 2023. Lawful interest in this State shall be at the rate of seven per cent. per annum. Acts of 1872

Usury. § 2024. Usury is the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest.

Effect of usury. § 2025. The effect of usury is to annul and make void the contract for the usury; the lender having the right to recover the principal sum loaned, with legal interest. All titles to property made as a part of an usurious contract, or to evade the laws against usury, are void.

Back interest. § 2026. Interest from date, when stipulated, if the debt is not punctually paid at maturity, may be recovered; *provided*, interest has not already been included in the principal amount.

Lex loci. § 2027. Every contract bears interest according to the law of the place of the contract at the time of the contract, unless upon its face it is apparent that the intention of the parties referred the execution of the contract to another forum: in this case the law of the forum shall govern.

Interest on judgment. § 2028. All judgments in this State bear lawful interest upon the principal amount recovered.

Payment—how applied to interest. § 2029. When a payment is made upon any debt it shall be applied first to the discharge of any interest due at the time, and the balance, if any, to the reduction of the principal. If the payment does not extinguish the interest then due, no interest shall be calculated on such balance of interest, but only on the principal amount up to the time of the next payment.

Article 1.—Bailments—General Principles.

§ 2030. All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party is liable and bound to pay them; if payable on demand, from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly, and gives interest from date. Interest on liquidated demands.

§ 2031. All accounts of merchants, tradesmen and mechanics, which by custom become due at the end of the year, bear interest from that time upon the amount actually due whenever ascertained. On merchants' accounts.

CHAPTER III.

OF BAILMENTS.

ARTICLE 1.—*General Principles.*ARTICLE 2.—*Of Carriers, etc.*ARTICLE 3.—*Of Hiring.*ARTICLE 4.—*Of Deposits.*ARTICLE 5.—*Of Loans.*ARTICLE 6.—*Of Pledges or Pawns.*

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2033. Property in bailee.

2034. Care and diligence.

2035. Ordinary.

SECTION.

2036. Extraordinary.

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2038. Burden of proof.

§ 2032. A bailment is a delivery of goods or property for the execution of a special object, beneficial either to the bailor or bailee, or both; and upon a contract, express or implied, to carry out this object and dispose of the property in conformity with the purpose of the trust. Definition.

§ 2033. In all cases the bailee, during the bailment, has a right to the possession of the property, and in most cases a special right of property in the thing bailed. For a violation of these rights by any one he is entitled to his action. Property in bailee.

Article 2.—Carriers, etc.

§ 2034. All bailees are required to exercise care and diligence in protecting and keeping safely the thing bailed. Different degrees of diligence are required according to the nature of the bailments.

§ 2035. *Ordinary diligence*, is that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed *ordinary neglect*.

§ 2036. *Extraordinary diligence*, is that extreme care and caution which very prudent and thoughtful persons use in securing and preserving their own property. The absence of such diligence is termed *slight neglect*.

§ 2037. *Gross neglect*, is the want of that care which every man of common sense, how inattentive soever he may be, takes of his own property.

§ 2038. In all cases of bailments after proof of loss, the burden of proof is on the bailee to show proper diligence.

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OF CARRIERS AND HEREIN OF THE LIABILITIES OF RAILROAD AND STEAMBOAT COMPANIES.

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- 2057. Liability of R. R. Co's as carriers.
- 2058. When there are several.

§ 2039. Any person undertaking to transport goods to another place for a compensation, is a carrier, and as such is bound to ordinary diligence.

§ 2040. One who pursues the business constantly or continuously for any period of time, or any distance of transportation, is a common carrier, and as such, is bound to use extraordinary diligence. In cases of loss the presumption of law is against him, and no excuse avails him unless it was occasioned by the act of God or the public enemies of the State.

§ 2041. A carrier of passengers is bound also to extraordinary diligence on behalf of himself and his agents to protect the lives

Article 2.—Carriers, etc.

and persons of his passengers. But he is not liable for injuries to the person, after having used such diligence.

§ 2042. A common carrier can not limit his legal liability by any notice given, either by publication or by entry on receipts given or tickets sold. He may make an express contract, and will then be governed thereby. Effect of notice to limit.

§ 2043. A common carrier, holding himself out to the public as such, is bound to receive all goods and passengers offered that he is able and accustomed to carry, upon compliance with such reasonable regulations as he may adopt for his own safety and the benefit of the public. Duty as to reception of goods, etc.

§ 2044. The responsibility of the carrier commences with the delivery of the goods, either to himself or his agent, or at the place where he is accustomed or agrees to receive them. It ceases with their delivery at destination according to the direction of the person sending, or according to the custom of the trade. Time of responsibility.

§ 2045. The carrier of passengers is responsible only for baggage placed in his custody, yet a passenger can not relieve himself from liability for freight by assuming to take care of his own baggage. For baggage.

§ 2046. [It shall be the duty of the railroad companies to cause their conductors, agents, or employees, to be provided with checks, so as to check all trunks or separate baggage of passengers from station to station on their roads, when required, and it shall be the duty of the conductor of every passenger train to cause, upon application to him, all trunks and baggage to be checked from any station to any point of destination on their road, or any road running under the control of the company of which he is conductor, under a penalty of fifty dollars for every failure to comply promptly with such requisition, to be recovered in the Justice's Court of the District where the demand for check was made, out of the company upon whose conductor the demand was made.] (a) Checks for baggage.

§ 2047. The common carrier is bound not only for the safe transportation and delivery of goods, but also that the same be done without unreasonable delay. For delay.

§ 2048. A *stoppage in transitu* by the vendor or consignor relieves the carrier from his obligation to deliver, nor is he thenceforward responsible for more than ordinary diligence in the care of the goods. Stoppage in transitu.

Article 2.—Carriers, etc.

§ 2049. The right of *stoppage in transitu* exists whenever the vendor in a sale on credit seeks to resume the possession of goods while they are in the hands of a carrier or middle man, in their transit to the vendee or consignee, on his becoming insolvent. It continues until the vendee obtains actual possession of the goods.

When it exists.

Estoppel on carrier.

§ 2050. The carrier can not dispute the title of the person delivering the goods to him by setting up adverse title in himself, or a title in third persons, which is not being enforced against him.

Lien.

§ 2051. The carrier has a lien on the goods for the freight, and may retain possession until it is paid, unless this right is waived by special contract or actual delivery. This lien exists only when the carrier has complied with his contract as to transportation. He can recover *pro rata* for the actual distance transported when the consignee voluntarily receives the goods at an intermediate point.

Freight lists—how made out.

§ 2052. [All freight bills or freight lists charged against, or to be collected out of any person for whom a railroad shall carry freight, in this State, shall contain the items of freight charged in said bills, or freight lists, by some certain and specific description, before they shall be collectable.] (a)

On baggage.

§ 2053. The carrier of passengers has a lien on the baggage not only for its freight, but for the passenger's fare.

Fraud on carrier.

§ 2054. The carrier may require the nature and value of the goods delivered to him to be made known, and any fraudulent acts, sayings, or concealment by his customers will release him from liability.

Limit as to value of baggage.

§ 2055. A carrier of passengers may limit the value of the baggage to be taken for the fare paid: in case of loss, however, and though no extra freight has been demanded or paid, the carrier is responsible for the value of the baggage lost; *provided*, the same be only such articles as a traveler for business or pleasure would carry for his or her own use.

What passengers may be refused.

§ 2056. Carriers of passengers may refuse to admit, or may eject from their conveyances all persons refusing to comply with reasonable regulations, or guilty of improper conduct, or of bad, dissolute, doubtful, or suspicious characters: so they may refuse to convey persons seeking to interfere with their own business or interest.

(a) Acts of 1855-6, p. 155.

Article 3.—Of Hiring.

§ 2057. Railroad companies are common carriers, and liable as such. As such companies necessarily have many employees who can not possibly control those who should exercise care and diligence in the running of trains, such companies shall be liable to such employees as to passengers for injuries arising from the want of such care and diligence.

Liability
of railroad
companies
as carriers.

§ 2058. When there are several connecting railroads under different companies, and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus and until delivery to the connecting road; the last company which has received the goods as "in good order" shall be responsible to the consignee for any damage, open or concealed, done to the goods, and such companies shall settle among themselves the question of ultimate liability.

When there
are several.

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- 2068. Reletting.
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- 2074. Possession.
- 2075. Loss or destruction.
- 2076. Generally an entire contract.

§ 2059. Hiring is a contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his servant, during a certain time, for a stipulated compensation, or where one contracts for the labor or services of another about a thing bailed to him for a specified purpose.

Contract of
hiring.

§ 2060. The hirer of things acquires a qualified ownership of them for the time, which entitles him to all their increase and to the possession and enjoyment of them, during the period of bailment, against even the owner himself.

Title of
hirer.

§ 2061. The contract may be for the return of the thing or of like property of the same kind and quality. In the former case, the risk of death or inevitable accident is with the bailor, and he can retake possession immediately at the expiration of the time

Duty as to
delivery.

Article 3.—Of Hiring.

of hiring. In the latter case, the risk is with the bailee, and he must deliver the thing hired before the bailor's interest is revested.

§ 2062. The obligations of the bailor of things are to do no act to deprive the hirer of the use and enjoyment of the chattel during the period of the bailment; to keep the thing in suitable order and repair for the purposes of the bailment; and to warrant the right of possession, and that the thing bailed is free from any secret fault rendering it unfitted for the purposes for which it is hired.

Engagement of the hirer. § 2063. The engagements of the hirer of things are to put the thing to no other use than that for which it is hired; to take ordinary care in its use; to redeliver at the expiration of the bailment; and to comply generally with the terms of the hiring. If the bailor sends his own agents with the thing bailed, as a driver for his horse, then the hirer is bound either to the bailor or to third persons, only for the consequences of his own directions and for gross neglect.

Effect of violation. § 2064. For a violation of the engagements of either party, the other may abandon the contract; and in case the hirer puts the thing to a different use, the bailor may sue as for a conversion, even though the hirer be an infant.

For torts—who may sue § 2065. For an interference with the possession, the right of action is in the hirer; for any injury to the property, or any interference with his rights of property, the bailor also has his right of action.

Effect of loss or destruction. § 2066. The loss or destruction of the thing hired, without fault on the part of the hirer, puts an end to the bailment, and the hirer should pay only for the time it was enjoyed.

Removal out of the State, etc. § 2067. No hirer of things has a right to remove such things beyond the jurisdiction of this State, except by consent of the bailor, nor to put the thing hired to any hazardous use, unless specially contracted for.

Reletting. § 2068. No hirer of a thing has the right to relet or hire the thing bailed to another, except with the consent, express or implied, of the bailor. In such case, the bailor may either take immediate possession of the thing bailed, or he may waive this right and hold the hirer bound to extraordinary care and diligence on the part of himself and the hirer from him.

§ 2069. A thing hired is not subject to sale under judgment obtained subsequent to the contract of hire against the owner, but

Article 3.—Of Hiring.

may be levied on, and a bond for its forthcoming at the expiration of the time for which it is hired may be demanded of the person hiring, *provided*, the time of hiring does not exceed one year. Levy on thing hired.

§ 2070. The hire of labor or services is the essence of every bailment in which goods are delivered to another, and compensation paid for care, attention, or labor bestowed upon them. It includes the contracts of forwarding and commission merchants, factors, wharfingers, mechanics, and all agents in such transactions. Hire of labor, etc.

§ 2071. In all such cases, the bailee is not only bound to exercise skill in the labor and work bestowed, but it is a part of the contract that he shall exercise ordinary care and diligence in keeping and protecting the articles entrusted to him. Rule of duty

§ 2072. In such cases, if the identical article, though materially changed by the labor bestowed, is to be returned, the title remains in the bailor. If the bailee furnishes a portion of the materials, the title to the entire structure is in the party furnishing the larger portion of the materials. If the bailor furnishes materials—such as silver for plate—but the contract does not contemplate the use of that material specially—then the title is in the bailee, to the article made, until it is delivered. Title to thing on which labor is bestowed.

§ 2073. If materials are furnished to be manufactured on shares, the title remains in the bailor until the delivery to him of his portion of the manufactured goods. Labor on shares.

§ 2074. The bailee, for hire of labor and services, is entitled to the possession of the thing bailed, pending the bailment. He has also a special lien upon the same for his labor and services, until he parts with possession; and if he delivers up a part, the lien attaches to the remainder in his possession for the entire claim under the same contract. Possession.
Lien.

§ 2075. If the thing bailed for labor and services be destroyed without fault on the part of the bailee, the loss falls upon the bailor, and the bailee may demand compensation for the labor expended and materials used upon it. Loss or destruction.

§ 2076. As a general rule, the contract of bailment is an entire contract, and a full performance is a condition precedent to an action upon it. Generally an entire contract.

*Int. on hire 35-44
20-121
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Article 4.—Of Deposits.

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- 2088. Inn.
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- 2093. Deposit of valuables.
- 2094. Presumption of law.
- 2095. Duty of inn-keeper.
- 2096. His lien.
- 2097. Keeper of livery stable.

§ 2077. When chattels are delivered by one person to another Definition. to keep for the use of the bailor, it is called a deposit; the depositary may undertake to keep it without reward, or gratuitously: it is then a naked deposit. If he receives or expects a reward or hire, he is then a depositary for hire: very variant consequences follow the difference in the contract.

§ 2078. A person may voluntarily undertake to be a depositary, Voluntary or involuntary. or he may become so involuntarily, as by finding: if a naked depositary, he is responsible only for gross negligence. Liability.

§ 2079. Deposits of money in a bank do not constitute a case Bank deposits. of naked deposit, the use of the money being a valuable consideration. A special deposit of a sealed package of money would be a naked deposit.

§ 2080. If one, in addition to safe keeping, undertakes gratuitously to carry money, or other articles, to another place, his liability is the same as that of a naked depositary. Carrying deposits.

§ 2081. A naked depositary may, at any time, terminate the Redelivery. bailments by a redelivery of the articles to the bailor.

§ 2082. A naked depositary may not use the deposit, without Using deposits. increasing his responsibility, unless such use is necessary for its preservation, or, from the circumstances, the consent of the depositor may be reasonably presumed.

§ 2083. A naked depositary is entitled to be reimbursed all Reimbursements. charges and expenses incurred by reason of the deposit, and may retain possession until the same are paid.

§ 2084. Depositaries for hire are bound to exercise ordinary care and diligence, and are liable as in other cases of bailment for

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hire; they have a lien also for their hire, and may retain possession until it is paid. Deposits for hire.

§ 2085. A factor's lien extends to all balances on general account, and attaches to the proceeds of the sale of goods consigned, as well as to the goods themselves. Peculiar confidence being reposed in the factor, he may, in the absence of instructions, exercise his discretion according to the general usages of the trade: in return, greater and more skillful diligence is required of him, and the most active good faith. Factor's lien

§ 2086. A warehouseman is a depositary for hire, and is bound only for ordinary diligence: a failure to deliver the goods, on demand, makes it incumbent on him to show the exercise of ordinary diligence. Warehousemen.

§ 2087. A wharfinger is also a depositary for hire, and liable upon the same principles. Wharfinger.

§ 2088. Under the term "inn" the law includes all taverns, hotels, and houses of public general entertainment for guests. Inn.

§ 2089. An inn-keeper is a depositary for hire, but from the peculiar nature of his business, his liability is governed by more stringent rules. Liability of inn-keeper.

§ 2090. All persons entertained for hire at an inn, or tavern, or hotel, are guests. Guests.

§ 2091. An inn-keeper is bound to extraordinary diligence in preserving the property of his guests, entrusted to his care, and is liable for the same, if stolen, where the guest has complied with all reasonable rules of the inn. Liability of inn-keeper for stolen goods.

§ 2092. It is not necessary to show actual delivery to the inn-keeper. Depositing goods in a public room, set apart for such articles, or leaving them in the room of the guest, or placing a horse in the stable, is a delivery to the inn-keeper; if, however, the guest delivers his goods to a servant under special charge to him to keep the same, the inn-keeper is not liable therefor. Proof.

§ 2093. The inn-keeper may provide an iron safe, or other place of deposit for valuable articles, and by posting a notice thereof, may require his guests to place such valuable articles therein, or he will be relieved from responsibility for them. Deposit of valuables.

§ 2094. In case of loss, the presumption is want of proper diligence in the landlord. Negligence or default by the guest himself, of which the loss is a consequence, is a sufficient defense. The inn-keeper can not limit his liability by a public notice; he Presumption of law.

Article 5.—Of Loans.

may adopt reasonable regulations for his own protection, and the publication of such to his guests binds them to comply therewith.

§ 2095. The inn-keeper who advertises himself as such is bound to receive, as far as he can accommodate, all persons offering themselves as guests, of good character, and who are willing to comply with his rules. Persons entertaining only a few individuals, or simply for the accommodation of travelers, are not inn-keepers, but simply depositaries for hire, bound to ordinary diligence.

§ 2096. The inn-keeper has a lien on the goods of all his guests for all his reasonable charges, and may retain possession until they are paid; his lien attaches though the guest has no title, or even stole the property, and the true owner must pay the charges upon that specific article before receiving the same.

§ 2097. The keeper of a livery stable is a depositary for hire, and is bound to the same diligence and entitled to the same lien as an inn-keeper.*

ARTICLE V.

OF LOANS.

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- 2098. Division of loans.
- 2099. Loan for use.
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- 2101. Diligence.
- 2102. Borrower no title.
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- 2105. Necessary charges.
- 2106. Increase.
- 2107. Loans to married women.
- 2108. How used.
- 2109. Death of parties.

§ 2098. Loans are of two kinds—for consumption or for use. A Division of loan for consumption is where the article is not to be returned in specie, but in kind; this is a sale, and not a bailment.

§ 2099. A loan for use is the gratuitous grant of an article to another for use, to be returned in specie, and may be either for a certain time or indefinitely, and at the will of the grantor.

§ 2100. A loan is generally entirely for the benefit of the borrower, but sometimes it is for the joint benefit of the lender and borrower, and occasionally for the exclusive benefit of the lender, as where one lends a horse to another to transact business for the lender; in the two latter cases the responsibility of the borrower is varied and less stringent, according to the circumstances and purpose of the loan.

* See further, as to "Liens," Sections 1959 to 1984, inclusive.

Article 5.—Of Loans.

§ 2101. The borrower usually is bound to exercise extraordinary Diligence. care and diligence, and is liable for slight neglect.

§ 2102. The borrower acquires no property in the thing loaned, Borrower no title. but only the right to possess and use it. For any interference with that right he may maintain an action.

§ 2103. A loan being for the personal benefit and use of the borrower, he can not transfer the possession to another without the consent, express or implied, of the lender; hence, if the loan be for a definite time the borrower has no such interest as is subject Not transferable. to levy and sale. Not subject to levy and sale.

§ 2104. The lender may not revoke a loan for a definite time so long as the borrower meets fully his engagements. A loan at will or indefinitely may be revoked at any time. When revocable.

§ 2105. A loan being gratuitous, the borrower must meet all necessary charges and expenses in preserving and taking care of the property during the time of the loan. If, however, extraordinary expenses be necessary to protect the property from destruction, the lender must reimburse the borrower such expenses. Necessary charges.

§ 2106. The increase, except by special contract, belongs to the lender. Increase.

§ 2107. By consent of the husband, a loan may be made to a married woman. In such case, the husband is bound as if he was the borrower, but has no control over the property. Loans to married women.

§ 2108. The loan must be used strictly for the purpose and in the manner contemplated by the parties in contract. A violation by the borrower is, in law, a conversion. How used.

§ 2109. The death of the lender terminates all indefinite loans, or loans at will or pleasure. It does not terminate a loan for a definite time. The death of the borrower terminates all loans to him. Death of parties.

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- 2111. Pledge of notes.
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§ 2110. A pledge, or pawn, is property deposited with another

Article 6.—Pledges or Pawns.

What is. as security for the payment of a debt. Delivery of the property is essential to this bailment, but promissory notes and evidences of debt may be delivered in pledge. The delivery of title deeds creates no pledge.

Pledge of notes. § 2111. The receiver in pledge or pawn of promissory notes is of such a *bona fide* holder as will protect him under the same circumstances as a purchaser from the equities between the parties, but not from the true owner, if fraudulently transferred, though without notice to him.

Sale by pawnee. § 2112. The pawnee may sell the property received in pledge after the debt becomes due and remains unpaid; but he must always give notice for thirty days to the pawner of his intention to sell, and the sale must be in public, fairly conducted, and to the highest bidder, unless otherwise provided by contract.

Use of goods pawned. § 2113. The pawnee may use the goods pawned, provided the use does not impair their real value. He has a lien on them for the money advanced, though not for other debts due to him. He may retain possession until his lien is satisfied, and has a right of action against any one interfering therewith.

Property in goods pawned. § 2114. The general property in the goods remains in the pawner, but the pawnee has a special property for the purposes of the bailment. The death of neither party interferes with their respective interests.

Transfer. § 2115. The pawnee may transfer his debt, and with it possession of the thing pawned, and the purchaser stands precisely in his situation.

Sale under execution. § 2116. Property in pawn may be seized and sold under execution against the pawner, but upon notice by the pawnee to the levying officer, the Court in distributing the proceeds will recognize his lien according to its dignity, and give such direction to the funds as shall protect his legal rights.

Liability of pawnee. § 2117. The pawnee is bound for ordinary care and diligence. If the property pledged be promissory notes or other evidences of debt, the pawnee must exercise ordinary diligence in collecting and securing the same.

Necessary expenses. § 2118. The pawner must pay all necessary expenses and repairs upon the property, but if the pawn has itself been profitable, or if the pawnee has used it to his own advantage, the pawner may require him to account for such profits.

Increase. § 2119. All increase of property in pawn belongs to the pawner.

Article 1.—Of the Contract.

CHAPTER IV.

OF PRINCIPAL AND SURETY.

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2121. The nature of the obligation.

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2122. *Stricti juris.*

2123. Form immaterial.

§ 2120. The contract of suretyship is that whereby one obligates himself to pay the debt of another in consideration of credit or indulgence, or other benefit, given to his principal, the principal remaining bound therefor. It differs from a guaranty in this, that the consideration of the latter is a benefit flowing to the guarantor.

§ 2121. The obligation of the surety is accessory to that of his principal, and if the latter from any cause becomes extinct, the former ceases of course, even though it be in judgment. If, however, the original contract of the principal was invalid from a disability to contract, and this disability was known to the surety, he is still bound.

§ 2122. The contract of suretyship is one of strict law, and his liability will not be extended by implication or interpretation.

§ 2123. The form of the contract is immaterial, provided the fact of suretyship exists; hence an accommodation endorser is considered merely as a surety.

Article 2.—Relative Rights of Contractor and Surety.

ARTICLE II.

RELATIVE RIGHTS OF CREDITOR AND SURETY.

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2124. Effect of release.
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SECTION.

2129. Holding to bail of surety.
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Effect of release. § 2124. The creditor may release or compound with the surety without releasing the principal, but the release of or compounding with one surety discharges a co-surety.

A change of contract. § 2125. A change of the nature or terms of a contract is called a novation; such novation, without the consent of the surety, discharges him.

Of risk. § 2126. Any act of the creditor, either before or after judgment against the principal, which injures the surety, or increases his risk, or exposes him to greater liability, will discharge him; a mere failure by the creditor to sue as soon as the law allows, or negligence to prosecute with vigor his legal remedies, unless for a consideration, will not release the surety.

Tender by surety. § 2127. The surety may tender to the creditor the amount of his debt, and demand that the evidence of and securities for the same be delivered up to him, to be enforced against his principal or co-sureties; and a failure of the creditor to comply, when within his power, shall operate to discharge the surety.

Notice to sue. § 2128. Any surety, guarantor, or endorser, at any time after the debt on which he is liable becomes due, may give notice in writing to the creditor, or his agent, or any person having possession or control of the obligation, to proceed to collect the same out of the principal, or any one of several principals liable therefor; and if the creditor or holder refuses or fails to commence an action for the space of three months after such notice (the principal being within the jurisdiction of this State), the endorser, guarantor, or surety giving the notice, as well as all subsequent endorsers and all co-sureties, shall be discharged; [*provided*, that no notice shall be considered a compliance with the requirements of this Section which does not state the County of the principal's residence.] (a)

Article 2.—Relative Rights of Creditor and Surety.

§ 2129. Any surety, guarantor, or endorser, desiring to have his principal held to bail, may [whether the debt is due or not] (a) ^{Holding to bail by surety.} make affidavit before any one authorized to administer an oath, stating the fact of his suretyship, guarantee or endorsement, and the contract on which he is liable, and that he has reason to apprehend that the payment of said debt, or some part thereof, will devolve upon him, unless his principal is held to bail. Upon such affidavit being presented to the creditor, or his agent or attorney holding such contract, it shall be his duty to commence suit forthwith; and such affidavit being filed with the petition shall operate as the affidavit of the plaintiff in other cases. Upon failure of the creditor to sue on such affidavit being presented as above set forth, the surety, guarantor, or endorser shall be discharged.

§ 2130. The creditor must pursue his remedy against the surety within the time prescribed by law, and no payment or promise by the principal or by a co-surety can extend the obligation of the surety or the remedy of the creditor against him. ^{Extending liability.} 37-589

§ 2131. If by any act of the creditor the surety is discharged, and in ignorance of the fact of such discharge the surety promises to pay, such promise shall not be binding. ^{Promise in ignorance.}

§ 2132. When the fact of suretyship appears on the face of the contract, the creditor shall sue out process and enter up judgment against him as such. ^{Process—how sued out}

ARTICLE III.

RIGHTS OF SURETY AGAINST PRINCIPAL.

SECTION.

- 2133. Process against principal.
- 2134. For money paid.
- 2135. Effect of judgment against surety.
- 2136. Payment of usury.
- 2137. Foreclosure of mortgage.
- 2138. Proof of suretyship.
- 2139. After judgment.

SECTION.

- 2140. Control of *fi. fa.*
- 2141. When sued separately.
- 2142. Payment pending the action.
- 2143. Contribution.
- 2144. Control by endorser.
- 2145. *Bona fide* purchaser protected.

§ 2133. A surety or endorser is entitled to the process of attachment, or *ne exeat*, against his principal before payment of the debt ^{Process against principal.} under the same circumstances as any other creditor.

(a) Acts of 1864-5, p. 106.

Article 3.—Rights of Surety against Principal.

§ 2134. Payment by a surety or endorser of a debt past due For money paid. entitles him to proceed immediately against his principal for the sum paid, with interest thereon, and all legal costs to which he may have been subjected by the default of his principal.

§ 2135. If the payment was made under judgment, and the Effect of judgment as to surety principal had notice of the pendency of the suit against the surety, the amount of such judgment shall be conclusive against the principal as to the amount for which the surety was bound. If the payment was not made under judgment, the principal may dispute the validity of the payment as to the amount, or as to the competency of the person to whom it was paid.

§ 2136. If the contract was originally usurious, and the surety Payment of usury. in payment includes the usury, he shall recover the same from the principal, unless previous to the payment, he had notice of the intention of the principal to resist usury.

§ 2137. If the principal executes any mortgage or gives other Foreclosure of mortgages security to the surety or endorser to indemnify him against loss by reason of his suretyship, the surety or endorser may proceed to foreclose such mortgage, or enforce such other lien or security so soon as judgment shall be rendered against him on his contract.

§ 2138. If the fact of suretyship does not appear on the face of Proof of suretyship. the contract, it may be proved by parol, either before or after judgment, the creditor not being delayed in his remedy by such collateral issue between the principal and his surety. If before judgment, the surety shall give notice to the principal of his intention to make such proof.

§ 2139. If judgment has been rendered without such proof, the After judgment. surety shall give at least ten days' notice to his principal of his intention to apply, at the next term of the Court where the judgment was entered, to make such proofs, and to have the fact of his suretyship entered of record, together with an order for the control of such judgment and execution there are against the principal, on payment of the same by him.

§ 2140. Any surety on the original contract, or on stay of execution, or an appeal, or in any other way, or the representative of Control of f. f. a. a deceased surety, who shall have paid off or discharged the judgment, or execution in whole or in part, and shall have the fact of such payment by him, entered on such execution by the plaintiff or his attorney, or the collecting officer, shall have the control of

Article 3.—Rights of Surety against Principal.

such execution, and the judgment upon which it is founded, to the same extent as if he was the original plaintiff therein, and be subrogated to all the rights of such plaintiff, for the purpose of reimbursing himself from his principal.

§ 2141. If the surety be sued separately from his principal, on payment by him of the judgment against him, he shall be entitled to control the judgment and execution against his principal in the same manner as if the judgment and execution were joint; and if he does not appear as surety in the judgment against him, he may give notice and make the proof and obtain the control in the same manner as pointed out in cases of joint judgments.

When sued separately.

§ 2142. If the surety pay off the debt pending the action against the principal and himself, or against the principal alone, such payment shall operate only to cause the action to proceed for the benefit of such surety, and the judgment may be entered in the name of the original plaintiff for the use of such surety.

Payments pending the action.

§ 2143. All the foregoing provisions shall apply to cases where there are more than one surety, so as to enable a surety discharging the joint debt, in whole or in part, either pending the action or after joint or several judgments, to control the same against his co-sureties for the purpose of compelling them to contribute their respective shares of the amount so paid by him.

Contribution.

§ 2144. Every indorser, who shall pay off and discharge the debt on which he is indorser, either pending the action or after judgment, whether the judgment be joint against the principal and all the indorsers, or several against such, shall be entitled to control the judgment and executions founded thereon against the principal and all prior indorsers, in the same manner, upon the same proof, and under the same circumstances, as has been herein provided in the case of sureties; and if such indorser shall collect the same of a prior indorser, such prior indorser shall have the same control of the judgment, or judgments, against the principal, and any indorser prior to him.

Control by endorser.

§ 2145. When the surety does not appear to be such in the judgment and execution, the lien of such judgment, when controlled by the surety, shall not interfere with *bona fide* purchasers without notice from the principal, whose rights were vested before the order giving control to the surety was granted.

Bona fide purchasers protected.

Article 4.—Rights of Sureties among themselves.

ARTICLE IV.

RIGHTS OF SURETIES AMONG THEMSELVES.

SECTION.

2146. Right of contribution.

2147. Interest thereon.

SECTION.

2148. Duty to account.

2149. *Ne exeat* at instance of surety.Right of
contribution

§ 2146. Where several are sureties for the same principal, for the same sum of money, either by one or by distinct instruments, and one pays more than an equal share of the sum, he may compel contribution from his co-sureties. If one of the co-sureties be insolvent, the deficiency in his share must be borne equally by the solvent sureties.

Interest
thereon.

§ 2147. The sum recovered as contribution bears interest from the time it was paid by the surety, and shall be deemed and held a liquidated demand.

Duty to ac-
count.

§ 2148. A surety suing for contribution must first account for all money or other thing received from the principal to indemnify him against loss; and if he has paid the entire debt, he may compel his co-surety to transfer to him any mortgage or other security taken from the principal for the protection of such co-surety by relieving him of all liability for contribution.

Transfer
of securities.

§ 2149. One of several sureties upon a debt not due, or a bond or other obligation not yet complied with, or if the debt be due and remains unpaid, may, by writ of *ne exeat*, detain a co-surety seeking to remove beyond the jurisdiction of the State, until their joint obligation is discharged.

Ne exeat
at the in-
stance of a
surety.

ARTICLE V.

RIGHTS OF SURETIES AS TO THIRD PERSONS.

SECTION.

2150. Subrogation.

SECTION.

2151. As to sureties.

Subrogation.

§ 2150. A surety who has paid the debt of his principal is subrogated, both at law and in equity, to all the rights of the creditor, and in a controversy with other creditors ranks in dignity the same as the creditor whose claim he paid.

As to se-
curities.

§ 2151. He is entitled, also, to be substituted in place of the creditor as to all securities held by him for the payment of the debt.

Article 1.—Relation of Principal and Agent among themselves.

CHAPTER V.

OF PRINCIPAL AND AGENT.

ARTICLE 1.—*Relation of Principal and Agent among themselves.*ARTICLE 2.—*Rights and Liabilities of Principal to Third Persons.*ARTICLE 3.—*Rights and Liabilities of Agent to Third Persons.*ARTICLE 4.—*Of Overseers.*

ARTICLE I.

RELATION OF PRINCIPAL AND AGENT AMONG THEMSELVES.

SECTION.

2152. How it arises.

2153. What may be done by agent.

2154. Trustees may convey by attorney.

2155. Who may be agent.

2156. How the agency is created.

2157. Revocation.

2158. Agent limited.

2159. Diligence of an agent.

SECTION.

2160. Agent can not buy or sell, etc.

2161. Personal profit.

2162. Estoppel.

2163. Agent of several.

2164. Commission and expenses.

2165. Illegal purpose.

2166. Effect of ratification.

2167. Of mingling goods.

§ 2152. The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf.

How it arises.

§ 2153. Whatever one may do himself may be done by an agent, except such personal trusts in which special confidence is placed in the skill, discretion, or judgment of the person called on to act; so an agent may not delegate his authority to another unless specially empowered so to do.

What may be done by agent.

§ 2154. [Executors, administrators, guardians, and trustees are authorized to sell and convey property, by attorneys in fact, in all cases where they may lawfully sell and convey in person.] (a.)

Executors, etc., may convey by attorney in fact.

§ 2155. Any person may be appointed an agent who is of sound mind; so a principal is bound by the acts of his infant agent, but a *feme covert* can not be an agent for another than her husband except by his consent, in which case he is bound by her acts.

Who may be agent.

§ 2156. The act creating the agency must be executed with the same formality (and need have no more) as the law prescribes for the execution of the act for which the agency is created. A cor-

How the agency is created.

(a) Acts of 1865-6, p. 148.

Article 1.—Relation of Principal and Agent among themselves.

poration may create an agent in its usual mode of transacting business, and without its corporate seal.

Revocation. § 2157. Generally, an agency is revocable at the will of the principal. The appointment of a new agent for the performance of the same act, or the death of either principal or agent, revokes the power. If, however, the power is coupled with an interest in the agent himself it is not revocable at will, and in all cases the agent might recover from the principal for an unreasonable revocation, any damages he may have suffered by reason thereof.

Agent limited by his authority. § 2158. The agent must act within the authority granted to him, reasonably interpreted; if he exceeds or violates his instructions, he does it at his own risk, the principal having the privilege of affirming or dissenting, as his interest may dictate. In cases where the power is coupled with an interest in the agent, unreasonable instructions, detrimental to the agent's interest, may be disregarded.

Diligence of agent. § 2159. An agent for hire is bound to exercise, about the business of his principal, that ordinary care, skill, and diligence required of a bailee for hire. A voluntary agent, without hire or reward, is liable only for gross neglect.

Agent can not buy or sell for himself. § 2160. Without the express consent of the principal, after a full knowledge of all the facts, an agent employed to sell, can not be himself the purchaser; and an agent to buy, can not be himself the seller.

Personal profit. § 2161. The agent must not make a personal profit from his principal's property; for all such he is bound to account.

Estopped. § 2162. An agent can not dispute his principal's title, except in such cases where legal proceedings, at the instance of others, have been commenced against him.

Agent of several. § 2163. Where several persons appoint an agent to do an act for their joint benefit, the instructions of one, not inconsistent with the general directions, shall protect the agent in his act.

Commission and expenses. § 2164. An agent who has discharged his duty is entitled to his commission and all necessary expenses incurred about the business of his principal. If he has violated his engagements, he is entitled to no commission.

Illegal purpose. § 2165. No rights can arise to either party out of an agency created for an illegal purpose.

Effect of ratification. § 2166. A ratification by the principal relates back to the act ratified, and takes effect as if originally authorized. A ratifica-

Article 2.—Rights and Liabilities of Principal as to Third Persons.

tion may be express, or implied from the acts or silence of the principal. A ratification once made can not be revoked.

§ 2167. An agent, by willfully mingling his own goods with those of his principal, does not create a tenancy in common, but if incapable of separation, the whole belongs to the principal. Of mingling goods.

The whole of ARTICLE II. *is taken together*

RIGHTS AND LIABILITIES OF PRINCIPAL AS TO THIRD PERSONS. 38-401.

SECTION.

- 2163. Principal—how far bound.
- 2169. Forms immaterial.
- 2170. Extent of authority.
- 2171. Failing to disclose principal.
- 2172. Credit given to agent.
- 2173. Representation by agent.
- 2174. Notice to.

SECTION.

- 2175. Principal bound for neglect, etc.
- 2176. Injuries by another agent.
- 2177. Trespass of agent.
- 2178. Benefit of contract to principal.
- 2179. Money illegally paid, etc.
- 2180. Agent is a competent witness.

§ 2168. The principal is bound by all the acts of his agent within the scope of his authority; if the agent exceeds his authority, the principal can not ratify in part and repudiate in part: he must adopt either the whole or none. Principal—how far bound. 38-398 17-200

§ 2169. The form in which the agent acts is immaterial: if the principal's name is disclosed, and the agent professes to act for him, it will be held to be the act of the principal. Forms immaterial. 2111.

§ 2170. The agent's authority will be construed to include all necessary and usual means for effectually executing it. Private instructions or limitations not known to persons dealing with a general agent can not affect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority. Extent of authority.

§ 2171. If an agent fails to disclose his principal, yet, when discovered, the person dealing with the agent may go directly upon the principal, under the contract, unless the principal shall have previously accounted and settled with the agent. Failing to disclose principal.

§ 2172. If the credit is given to the agent by the choice of the seller, he can not afterward demand payment of the principal. Credit given to agent.

§ 2173. The principal is bound by all representations made by his agent in the business of his agency, and also by his willful concealment of material facts, although they are unknown to the principal, and known only by the agent. Representations by agent.

Article 2.—Rights and Liabilities of Principal as to Third Persons.

§ 2174. Notice to the agent of any matter connected with his agency is notice to the principal.

Principal bound for neglect and fraud. § 2175. The principal is bound for the care, diligence, and fidelity of his agent in his business, and hence he is bound for the neglect and fraud of his agent in the transaction of such business.

Injuries by another agent. § 2176. The principal is not liable to one agent for injuries arising from the negligence or misconduct of other agents about the same business; the exception in case of railroads has been previously stated.

Trespass of agent. § 2177. The principal is not liable for the willful trespass of his agent, unless done by his command or assented to by him.

Benefit of contract to principal. § 2178. The principal shall have advantage of his agent's contracts in the same manner as he is bound by them, so far as they come within the scope of his agency. If, however, the agency has been concealed, the party dealing with him may set up any defense against the principal which he has against the agent.

Money illegally paid, etc. § 2179. The principal may recover back money paid illegally, or by mistake of his agent, or goods wrongfully transferred by the agent, the party receiving the goods having notice of the agent's want of authority or willful misconduct.

Agent is a competent witness. § 2180. The agent is a competent witness either for or against his principal, notwithstanding he may strictly come within the rule of incompetency from interest. His interest goes to his credit. The declarations of the agent as to the business transacted by him are not admissible against his principal, unless they were a part of the negotiation, and constituting the *res gestæ*, or else the agent be dead.

ARTICLE III.

RIGHTS AND LIABILITIES OF AGENT AS TO THIRD PERSONS.

SECTION.

- 2181. Agent may act under this Code, etc.
- 2182. Money paid by mistake, etc.
- 2183. When he has right of action.
- 2184. For interference with his possession.

SECTION.

- 2185. When responsible for credit, etc.
- 2186. Public agent.
- 2187. Liability for excess of authority.
- 2188. Enforcing contracts, etc.

Agent may act under this Code for principal. § 2181. Any act authorized or required to be done under this Code by any person in the prosecution of his legal remedies, may be done by his agent, and for this purpose he is authorized to make an affidavit and execute any bond required, though his

Article 3.—Rights and Liabilities of Agent as to Third Persons.

agency be created by parol. In all such cases, if the principal repudiate the act of the agent, the agent shall be personally bound, How bound. together with his sureties.

§ 2182. If money be paid to an agent by mistake, and he in good faith pays it over to his principal, he shall not thereafter be personally liable therefor. In all other cases he is liable for its repayment. If money be paid by an agent by mistake, he may recover it back in his own name. Money paid by mistake may be recovered.

§ 2183. Generally an agent has no right of action on contracts made for his principal. The following are exceptions: When he has a right of action.

1. A factor contracting on his own credit.
2. Where promissory notes or other evidences of debt are made payable to an agent of a corporation or joint stock company.
3. In all cases where the contract is made with the agent in his individual name, though his agency be known.
4. Auctioneers may sue in their own name for goods sold by them.
5. In cases of agency coupled with an interest in the agent known to the party contracting with him. In all these cases, payment to the principal before notice of the agent's claim is a good defense.

§ 2184. An agent having possession, actual or constructive, of the property of his principal, has a right of action for any interference with that possession by third persons. For interference with his possession.

§ 2185. Where the agency is known, and the credit is not expressly given to the agent, he is not personally responsible upon the contract. The question to whom the credit is given is a question of fact to be decided by the jury under the circumstances of each case. When responsible for credit given.

§ 2186. Public agents contracting in behalf of the public, are not individually liable on such contracts. Public agents

§ 2187. All agents, by an express undertaking to that effect, may render themselves individually liable. And every agent exceeding the scope of his authority is individually liable to the person with whom he deals: so, also, for his own tortious act, whether acting by command of his principal or not, he is responsible; for the negligence of his under-servant, employed by him in behalf of his principal, he is not responsible. Liability for excess of authority. Or tort.

§ 2188. When the agent exceeds his authority, so that the principal is not bound, the agent can not enforce the contract in his

Article 4.—Overseers.

Enforcing own name against the person with whom he deals, unless the con-
 contracts exceeding his tract has been fully executed upon the part of the agent, or the
 authority. credit was originally given to the agent.

ARTICLE IV.

OVERSEERS.

SECTION.

2189. Right and power of overseer.

2190. Parol contracts.

SECTION.

2191. Suit on breach of contracts.

Right and
 powers of
 overseers.

§ 2189. In the absence of the employer, the overseer stands in his place. It is his duty to see to the sustenance and protection of his employer's property, and to discharge this duty, he is justified in repelling aggressors and trespassers to the same extent with the employer.

Parol con-
 tracts.

§ 2190. Contracts between employers and overseers may be by parol, though they may extend beyond a year from the time of the contract.

Suit on
 breach of
 contract.

§ 2191. When the contract is for a year, and the employer wrongfully discharges the overseer before the end of the year, the overseer may either sue immediately for any special injury from the breach of the contract, or, treating the contract as rescinded, may sue for the value of the services rendered, or he may wait till the expiration of the year and sue for, and recover his entire wages.

TITLE IV.

OF PROPERTY AND THE TENURE BY WHICH IT IS HELD.

CHAPTER 1.—Of Realty.

CHAPTER 2.—Of Personality.

CHAPTER I.

OF REALTY.

SECTION.

- 2192. Realty definition.
- 2193. Fixtures.
- 2194. Detached becomes personality.
- 2195. Allodial tenure.
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- 2197. When to be executed.
- 2198. How.
- 2199. Just compensation.
- 2200. Destroying property, etc.
- 2201. Owner of running water.

SECTION.

- 2202. Streams boundary lines.
- 2203. Navigable streams.
- 2204. Owners of adjacent lands.
- 2205. Power of owner of streams.
- 2206. Levees and ditches.
- 2207. Bridge or ferry rights.
- 2208. Franchise—when exclusive.
- 2209. Private ways.
- 2210. Charges on lands.

§ 2192. Realty, or real estate, includes all lands and the build-
ings thereon, and all things permanently attached to either, or
any interest therein or issuing out of, or dependent thereon. The
right of the owner of lands extends downwards and upwards in-
definitely.

Realty defini-
tion.

§ 2193. Any thing intended to remain permanently in its place,
though not actually attached to the land, such as a rail fence, is
a part of the realty and passes with it. Machinery not actually
attached, but moveable at pleasure, is not a part of the realty.

Fixtures.

§ 2194. Any thing detached from the realty becomes personality
instantly on being so detached, and may be the subject-matter of
larceny, even by the person wrongfully detaching it.

Detached
becomes per-
sonality.

§ 2195. The tenure by which all realty is held in this State is
under the State as original owner; it is without service of any
kind, and limited only by the right of eminent domain remaining
in the State.

Allodial
tenure.

§ 2196. The right of eminent domain is the right of the State,

Chapter 1.—Of Realty.

Eminent domain. through its regular organization, to re-assert, either temporarily or permanently, its dominion over any portion of the soil of the State, on account of public exigency and for the public good; thus in time of war or insurrection the proper authorities may possess and hold any part of the territory of the State for the common safety; and in time of peace the Legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel.

When to be exercised. § 2197. It is the province of the Legislature to judge of the exigencies requiring the exercise of this right, but if, under pretext of such necessity, the property of one is taken for the private use of another, the Courts should declare the law inoperative.

How. § 2198. The Legislature may exercise this right either directly through the officers of the State, or through the medium of corporate bodies, or by means of individual enterprise.

Just compensation. § 2199. Except in cases of extreme necessity and great urgency, the right of eminent domain can not be exercised without first providing for just compensation to the owner for the interference with his exclusive rights.

Destroying property for public good. § 2200. Analogous to the right of eminent domain is the power from necessity vested in corporate authorities of cities, towns, and Counties, to interfere with and sometimes to destroy the private property of the citizen for the public good, such as the destruction of houses to prevent the extension of a conflagration, or the taking possession of buildings to prevent the spreading of contagious diseases. In all such cases, any damages accruing to the owner from such acts, and which would not otherwise have been sustained, must be paid by such corporation.

Owner of running water. § 2201. Running water, while on land, belongs to the owner of it, but he has no power to divert it from the usual channel, nor can he so use or adulterate it as to interfere with the enjoyment of it by the next owner.

Streams boundary lines. § 2202. The beds of streams not navigable belong to the owner of the adjacent land; if the stream of water is the dividing line, each owner is entitled to the thread or center of the main current; if the current changes gradually, the line follows the current; if from any cause it takes a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner.

Chapter 1.—Of Realty.

§ 2203. A navigable stream is one capable of bearing upon its bosom, either for the whole or a part of the year, boats loaded with freight in regular course of trade. The mere rafting of timber or transporting wood on small boats does not make a stream navigable.

Navigable streams.

§ 2204. The right of the owner of lands adjacent to navigable streams, extends to low water mark in the bed of the stream.

Owners of adjacent lands.

§ 2205. The owner of a stream not navigable is entitled to the same exclusive possession thereof as he has of any other part of his land; and the Legislature has no power to compel or interfere with him in its lawful use, for the benefit of those above or below him on the stream, except to restrain nuisances.

Power of owner of streams.

§ 2206. All persons owning, or who may hereafter own lands, on any water courses in the State, are authorized and empowered to ditch and embank their lands, so as to protect the same from freshets and overflows in said water courses; *provided always*, that the said ditching and embanking does not divert said water course from its ordinary channel, but nothing shall be so construed as to prevent the owners of land from diverting unnavigable water courses through their own lands.

Levees and ditches.

§ 2207. The right to construct a bridge or establish a ferry for private use across a water course within or adjoining lands, is appurtenant to the ownership of the land, but the right to establish and keep a public bridge or ferry is a franchise to be granted by the State. Where such a grant interferes with the owner's right of exclusive possession, just compensation to him must be first made.

Bridge for ferry right.

§ 2208. No franchise granted by this State shall be held to be exclusive, unless plainly and expressly so declared to be in the grant.

Franchise—when exclusive.

§ 2209. The right of private way over another's land may arise from express grant, or from prescription by seven years' uninterrupted use through improved lands, or twenty years' use over wild lands, or by implication of law when such right is necessary to the enjoyment of lands granted by the same owner, or by compulsory purchase and sale through the Inferior Court in the manner prescribed by this Code.*

Private ways.

§ 2210. Annuities or legacies, or debts charged upon lands by testaments, attach thereto and follow the lands in the hands of all persons.

Charges on land.

* For further provision as to water courses, roads, bridges, and ferries, see Part 1, Title 6, Chapter 5.

CHAPTER II.

OF PERSONALTY.

SECTION.

2211. What is.

2212. Possession.

2213. Chose in action.

2214. Property in wild animals, etc.

SECTION.

2215. Deposit and increase on land.

2216. Increase follows mother.

2217. Rights and remedies.

2218. Assignment of choses in action.

What is. § 2211. Personalty, or personal estate, includes all such property as is movable in its nature—in fact, every thing having value inherent in itself, or the representative of value, and not included in the definition of realty. Stocks representing shares in an incorporated company holding lands, or a franchise in or over lands, are personalty, except in mining and manufacturing companies whose principal investments are in realty and machinery attached thereto, in which case the stock shall be deemed realty.

Possession. § 2212. Personalty in possession is where the right of property is accompanied by immediate possession, actual or constructive.

Chose in action. § 2213. Personalty to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld, is termed by the law a chose in action.

Property in wild animals, etc. § 2214. Property may exist in all animals, birds, and fishes; to constitute property in those which are wild by nature, as distinguished from domestic animals, one must have them within his actual possession, custody, or control; this he may obtain either by taming or domesticating them, or by confining them within restricted limits, or by killing or capturing them.

Deposit and increase on land. § 2215. Any deposit made by wild animals on realty belongs to the owner; thus, honey deposited by bees in a tree belongs to the owner of the tree, though the bees may be hired by another; so the eggs and young of birds, or the increase of animals, so long as they remain unable to leave the land, belong to the owner.

Increase follows mother. § 2216. The increase of all animals follow the condition of the mother, and belong to the owner of the mother at the time of birth.

Rights and remedies. § 2217. For every violation of a contract, express or implied, and for every injury done by another to person or property, the law gives a right to recover, and a remedy to enforce it. Such a right is a chose in action, and such a remedy is an action or suit at law.

Chapter 1.—Absolute Estates, or in Fee Simple.

§ 2218. All choses in action arising upon contract may be assigned so as to vest the title in the assignee, but he takes it, except negotiable securities, subject to the equities existing between the assignor and debtor at the time of the assignment, and until notice of the assignment is given to the person liable.

Assignment of choses in action.

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TITLE V.

OF ESTATES AND THE RIGHTS ATTACHED THERETO.

CHAPTER 1.—*Of Absolute Estates, or in Fee Simple.*

CHAPTER 2.—*Of Estates for Life.*

CHAPTER 3.—*Of Estates in Remainder, and Reversions.*

CHAPTER 4.—*Of Estates for Years.*

CHAPTER 5.—*Of Landlord and Tenant.*

CHAPTER 6.—*Of Estates upon Condition.*

CHAPTER 7.—*Of Tenancy in Common.*

CHAPTER 8.—*Of Trust Estates.*

CHAPTER I.

OF ABSOLUTE ESTATES, OR IN FEE SIMPLE.

SECTION.

2219. What is, and in what created.

2220. Fee simple.

2221. May be in abeyance.

2222. What words create.

SECTION.

2223. Technical words.

2224. Estates tail.

2225. Remote limitations.

§ 2219. Estate is the quantity of interest which an owner has in property. In this State it is applicable equally to realty and personalty. Any estate may be created in the latter that can be created in the former, and the rules of construction as to both shall be the same. The provisions of this Code, under this Title, when not restricted to one, apply to both.

What is.

In what created.

§ 2220. An absolute or fee simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal

Fee simple.

Chapter 1.—Absolute Estates, or in Fee Simple.

Descent. representatives upon his death intestate. Realty descends directly to the heirs, subject to be administered by the legal representative, if there be one, for the payment of debts and the purposes of distribution. If there be a legal representative, the right to recover it is in him; if there be none, the heirs may sue in their own name.

§ 2221. An absolute estate may be created to commence in future, and the fee may be in abeyance without detriment to the rights of subsequent remainders. A fee may be limited upon a fee, either by deed or will, where the plain intention of the grantor or testator requires it, and no other rule of law is violated thereby.

§ 2222. The word "heirs," or its equivalent, is not necessary to create an absolute estate; but every conveyance, properly executed, shall be construed to convey the fee, unless a less estate is mentioned and limited in such conveyance. If a less estate is expressly limited, the Courts shall not, by construction, increase such estate into a fee, but, disregarding all technical rules, shall give effect to the intention of the maker of the instrument, as far as the same is lawful, if the same can be gathered from its contents; and if not, in such case the Court may hear parol evidence to prove the intention.

§ 2223. Limitations over to "heirs," "heirs of the body," "lineal heirs," "lawful heirs," "issue," or words of similar import, shall be held to mean "children," whether the parents be alive or dead; and under such words children, and the descendants of deceased children, by representation in being at the time of the vesting of the estate, shall take.

§ 2224. Estates tail are prohibited and abolished in this State. Gifts or grants to one, and the heirs of his body, or his heirs male or heirs female, or his heirs by a particular person, or his children, or his issue, convey an absolute fee. Estates tail being illegal, the law will never presume or imply such an estate. Limitations which, by the English rules of construction, would create an estate tail by implication in this State, shall give a life estate to the first taker with remainder over in fee to his children and their descendants as above provided; and if none are living at the time of his death, remainder over in fee to the beneficiaries intended by the maker of the instrument.

§ 2225. All limitations over after the death of the first taker, upon his dying without heirs, or dying without issue, or dying

Chapter 2.—Estates for Life.

without leaving heirs or issue, or on failure of issue, or other and equivalent terms, shall be construed to mean a failure of heirs or issue at the time of the death of the first taker, and shall convey the estate in the manner prescribed in Section 2224.

Remote limitations.

CHAPTER II.

OF ESTATES FOR LIFE.

SECTION.

- 2226. What is.
- 2227. How created.
- 2228. Estates during widowhood, etc.
- 2229. Rights and liabilities of tenants.
- 2230. Increase.
- 2231. Emblements.

SECTION.

- 2232. Renter from life tenant.
- 2233. Tenancy by courtesy.
- 2234. Of lands.
- 2235. Removal of personalty.
- 2236. Bond of purchaser, etc.

§ 2226. An estate for life may be either for the life of the tenant, or of some other person or persons.

What is.

§ 2227. An estate for life may be created by deed or will, or express agreement of the parties, or by operation of law; it can not be created in such property as is destroyed in the use.

How created

§ 2228. Estates which may extend during life, but must terminate at death, so long as they exist, are deemed life estates; such are estates during widowhood.

Estates during widowhood, etc.

§ 2229. The tenant for life is entitled to the full use and enjoyment of the property, so that in such use he exercises the ordinary care of a prudent man for its preservation and protection, and commits no acts tending to the permanent injury of the person entitled in remainder or reversion. For the want of such care, and the willful commission of such acts, he forfeits his interest to the remainder-man if he elects to claim immediate possession.

Rights and liabilities of tenant for life.

§ 2230. The natural increase of the property belongs to the tenant for life. Any extraordinary accumulation of the corpus, such as issue of new stock upon the share of an incorporated or joint stock company, attaches to the corpus and goes with it to the remainder-man.

Increase.

§ 2231. If the life estate be terminated not by the act of the tenant, he and his legal representatives shall be entitled to emblements, which are the profits of the crop sowed by him during life, whether the plants be annual or perennial.

Emblements

Chapter 2.—Estates for Life.

§ 2232. If a tenant for life rents the land for the year, and dies, or the estate is otherwise terminated during the year, the tenant shall be entitled to the land for the term of the year, upon complying with his contract with the tenant for life.

By courtesy. § 2233. There is no tenancy by courtesy in Georgia.

Of lands. § 2234. No forfeiture shall result from a tenant for life selling the entire estate in lands; the purchaser acquires only his interest.

Removal of personalty. § 2235. The tenant for life, in personalty, can not remove it beyond the jurisdiction of this State without the consent of the remainder-man. If he attempts to do so fraudulently, he forfeits his interest; if not fraudulently, the remainder-man, or reversioner, is entitled to the writ of *ne exeat* to restrain him.

Bond of purchaser, etc. § 2236. Where a life estate is sold under process of law, upon the demand of any one interested in remainder, his agent or attorney, accompanied by a statement, under oath, of his interest, it shall be the duty of the officer making the sale, to require of the purchaser a bond, in double the value of the property, with good security, for the delivery of the property to the persons entitled in remainder, which bond shall be filed in the office of the Clerk of the Superior Court of the County where the sale is made, and subject to be sued on by any person interested in remainder; on failure to give such bond, the property shall be resold at the risk of the purchaser, if notice of the demand was given before he purchased.

CHAPTER III.

OF ESTATES IN REMAINDER, AND REVERSIONS.

SECTION.

- 2237. Definition.
- 2238. No particular estate necessary.
- 2239. Vested or contingent.
- 2240. Rights of heirs.
- 2241. Perpetuities.

SECTION.

- 2242. Created by parol.
- 2243. Vesting of remainders favored.
- 2244. Assent of executor.
- 2245. Merger.
- 2246. Estates during widowhood.

Definitions. § 2237. An estate in remainder is one limited to be enjoyed after another estate is determined, or at a time specified in the future. An estate in reversion is the residue of an estate, usually the fee left in the grantor and his heirs after the determination of a particular estate which he has granted out of it. The rights of

Chapter 3.—Estates in Remainder, and Reversions.

the reversioner are the same with those of a vested remainder-man in fee.

§ 2238. No particular estate being necessary to sustain a remainder under this Code, the defeat of the particular estate for any cause does not destroy the remainder. No particular estate necessary.

§ 2239. Remainders are either vested or contingent. A vested remainder is one limited to a certain person at a certain time, or upon the happening of a necessary event. A contingent remainder is one limited to an uncertain person, or upon an event which may or may not happen. Vested or contingent.

§ 2240. If the remainder-man dies before the time arrives for possessing his estate in remainder, his heirs are entitled to a vested remainder interest, and to a contingent remainder interest when the contingency is not as to the person, but as to the event. If the contingency be as to the person, and that person be not in esse at the time when the contingency happens, his heirs are not entitled. Rights of heirs.

§ 2241. Limitations of estates may extend through any number of lives in being at the time when the limitations commence, and twenty-one years, and the usual period of gestation added thereafter. A limitation beyond that period, the law terms a perpetuity, and forbids its creation. When an attempt is made to create a perpetuity, the law gives effect to the limitations not too remote, declaring the others void, and thereby vests the fee in the last taker under the legal limitations. Perpetuities

§ 2242. Remainders can not be created by parol. They may be created for persons not in being, and if a vested remainder, it opens to take in all persons within the description coming into being up to the time of enjoyment commencing. Creation by parol.
Opening if vested.

§ 2243. The law favors the vesting of remainders in all cases of doubt. In construing wills, words of survivorship shall refer to the death of the testator in order to vest remainders, unless a manifest intention to the contrary appears. Vesting of remainders favored.

§ 2244. The assent of the executor to a legacy to the tenant for life enures to the benefit of the remainder-man. Remainder-man, at the termination of the life estate, may take possession immediately. If, however, the will provides for a sale or other act to be done for the purpose of, or prior to a division, the executor may recover possession for the purpose of executing the will. Assent of the executor.

§ 2245. If two estates in the same property unite in the same person in his individual capacity, the less estate is merged in the greater. Merger.

Things as to Contingent in
369 72

Chapter 4.—Estates for Years.

§ 2246. An estate may be created during widowhood, and such estates shall be subject to the same rules as life estates. Limitations over upon the marriage of a widow shall be valid, unless such limitations are manifestly intended to operate as a restraint upon the free action of such widow in respect to marriage, and are not simply prudential provisions for the protection of the interest of children, or others in such event; in such cases they are void.

Estates during widowhood.

Limitations over on marriage.

NOTE.—For rules prescribing the effect of certain limitations in creating remainders, refer to Chapter 1 of this Title. And for remedies of remaindermen against tenant for life and purchasers, refer to Chapter 2 of this Title.

CHAPTER IV.

OF ESTATES FOR YEARS.

SECTION.

- 2247. Definition.
- 2248. Distinction from bailment.
- 2249. Rights of tenant.

SECTION.

- 2250. Emblements.
- 2251. Expenses and repairs.
- 2252. Lease.

§ 2247. An estate for years is one which is limited in its duration to a period fixed, or which may be made fixed and certain. If it be in lands, it passes as realty in this State. It may be for any number of years, so that the limitation be within the rule against perpetuities.

Definition.

§ 2248. It differs when applied to personalty from a contract of hiring, in this, that the latter is a bailment conveying no interest in the property to the bailee, but a mere right of use; when applied to realty, it differs from the relation of landlord and tenant in this, that in the latter, the tenant has no estate, but a mere right of use, very similar to the right of a hirer of personalty.

Distinction from bailment.

§ 2249. An estate for years carries with it the right to use in as absolute a manner as a greater estate, but not to the injury of the property or of the person entitled, either in remainder or reversion; the same acts of omission and commission which have been heretofore prescribed as grounds of forfeiture of an estate for life, will operate to the same effect against a tenant for years.

Rights of tenant.

§ 2250. A tenant for years is not entitled to emblements, unless the estate be terminated before the period fixed, by the happening of some contingency provided in its creation, and without fault on the part of the tenant.

Emblements.

Chapter 5.—Landlord and Tenant.

§ 2251. A tenant for years is bound for all repairs or other Expenses and repairs. expense necessary for the preservation and protection of the property.

§ 2252. When one grants to another an estate for years out of Lease. his own estate, reversion to himself, it is usually termed a lease. It may be confined to a particular interest in lands, such as mining or agricultural, in which event no other interest passes. If no object of the lease is stated, the mining interest will not pass unless the circumstances justify an implication of such an inten- Construc- tion. tion in the parties.

CHAPTER V.

OF LANDLORD AND TENANT.

SECTION.

- 2253. Definition.
- 2254. How created.
- 2255. Rights of tenants.
- 2256. Delivery of possession.
- 2257. Estoppel.
- 2258. Repairs and improvements.
- 2259. Distress for rent.
- 2260. Lien for rent.

SECTION.

- 2261. Lien for advancements.
- 2262. Interest.
- 2263. Rent paid in kind.
- 2264. Duration of tenancy.
- 2265. Notice to quit.
- 2266. Emblements.
- 2267. Casualties no abatement of rent.

§ 2253. When the owner of lands grants to another simply the Definition. right to possess and enjoy the use of such lands, either for a fixed time or at the will of the grantor, and the tenant accepts the grant, the relation of landlord and tenant exists between them. In such case no estate passes out of the landlord, and the tenant has only a usufruct which he can not convey except by the landlord's consent, and which is not subject to levy and sale.

§ 2254. Contracts creating the relation of landlord and tenant How created for any time not exceeding one year, may be by parol, and if made for a greater time shall have the effect of a tenancy at will.

§ 2255. The tenant has no right beyond the use of the land Rights of tenants. and tenements rented to him, and such privileges as are necessary to the enjoyment of its use. He can not cut or destroy growing trees, remove permanent fixtures, or otherwise injure the property. He may use other timber for firewood and the pasturage for his cattle.

§ 2256. The tenant must deliver possession at the expiration of Delivery of possession. his term, and if he fails or refuses to do so a summary remedy is given to the landlord.

Chapter 5.—Landlord and Tenant.

§ 2257. The tenant can not dispute his landlord's title, nor at-
 Estoppel. torn to another claimant while in possession.

§ 2258. The landlord must keep the premises in repair, and is
 Repairs and liable for all substantial improvements placed upon them by his
 improve- consent.
 ments.

§ 2259. The landlord shall have power to distrain for rent as
 Distress for soon as the same is due, or before due, if the tenant is seeking to
 rent. remove his goods from the premises. If the tenant fails to pay
 the rent due at any time, the landlord may re-enter immediately
 and dispossess the tenant. If the tenant holds over after his
 term expires the landlord may recover double rent for such
 time.

§ 2260. The landlord's lien for his rent shall attach from the
 Lien. time of levying his distress warrant, but it shall take precedence
 of no lien of older date except as to the crop raised on the
 premises.

§ 2261. [Landlords may have, by special contract in writing, a
 Lien for lien upon the crops of their tenants for such stock, farming uten-
 provisions. sils, and provisions, furnished such tenants, for the purpose of
 making their crops; and such lien shall be forced in the same
 way and manner as liens are enforced against steamboats in this
 State.] (a)

§ 2262. All contracts for rent shall bear interest from the time
 Interest. the rent is due, and judgments upon suits for rent may be render-
 ed at the first term.

§ 2263. When the rent agreed to be paid is a part of the crop
 Rent paid such portion shall not be liable to be levied on by any process for
 in kind. debt against the tenant; *provided*, the contract is in writing and
 the rent does not exceed one-half of the crop.

§ 2264. Where no time is specified for the termination of the
 Duration of tenancy, the law construes it to be for the calendar year, but if it
 is expressly a tenancy at will, then either party may terminate it
 at will.

§ 2265. Two months' notice is necessary from the landlord to
 Notice to terminate a tenancy at will. One month's notice is necessary from
 quit. tenant.

§ 2266. The tenant at will is entitled to his emblements if the
 Emblements crop is sowed before notice to quit by the landlord, or the tenancy

Chapter 6.—Estates on Condition.

otherwise suddenly terminated, as by sale of the estate by the landlord, or by judicial sale, or death of the landlord or tenant.

§ 2267. The destruction of a tenement by fire, or the loss of possession by any casualty, not caused by the landlord, or from defect of his title, shall not abate the rent contracted to be paid.

Casualties
no abate-
ment of rent

CHAPTER VI.

OF ESTATES ON CONDITION.

SECTION.

2268. Definition.
2269. Precedent and subsequent, etc.
2270. Repugnant condition.

SECTION.

2271. Disability.
2272. Dependent covenants, etc.
2273. Effect of breach of condition.

§ 2268. An estate may be granted upon a condition, either express or implied, upon performance or breach of which the estate shall either commence, be enlarged, or be defeated.

Definition.

§ 2269. Conditions may be either precedent or subsequent. The former require performance before the estate vests; the latter may cause a forfeiture of a vested estate. The law inclines to construe conditions to be subsequent rather than precedent, and to be remediable by damages rather than by forfeiture.

Precedent
and subse-
quent.

§ 2270. A condition repugnant to the estate granted is void; so are conditions to do impossible or illegal acts, or which in themselves are contrary to the policy of the law.

Repugnant
condition.

§ 2271. No legal disability, except being *non compos mentis*, will excuse a person from failing to comply with a condition annexed to his or her estate; no notice of such condition need be given by the person claiming under the limitation over.

Disability.

Notice.

§ 2272. The dependence or independence of covenants or conditions, must be collected from the intention of the parties, viewing the entire instrument; in dependent conditions the failure of the person first required to act is an excuse to the other party for failing to comply. If the conditions be independent, no such excuse avails: the law inclines to construe conditions to be independent.

Dependent
and indepen-
dent cove-
nants.

§ 2273. Upon breach of condition subsequent, working a forfeiture, the person to whom the estate is limited may enter immediately.

Effect of
breach of
condition.

CHAPTER VII.

OF TENANCY IN COMMON.

SECTION.

2274. Joint tenancies abolished.

2275. Definition of tenancy in common.

2276. Rights, etc., of co-tenants.

SECTION.

2277. Adverse possession.

2278. Partition.

Joint tenancies abolished.

§ 2274. Joint tenancy does not exist in this State, and all such estates, under the English law, will be held to be tenancies in common under this Code.

Definition of tenancy in common.

§ 2275. Wherever two or more persons, from any cause, are entitled to the possession, simultaneously, of any property in this State, a tenancy in common is created. Tenants in common may have unequal shares: they will be held to be equal unless the contrary appears. The fact of inequality does not give the person holding the greater interest any privileges, as to possession, superior to the person owning a lesser interest, so long as the tenancy continues.

Rights and liabilities of co-tenants.

§ 2276. Every tenant in common has the right to possess the joint property, and so long as he occupies no greater portion of it than his own share would be on division, and does not withdraw from it any of its essential value, such as mineral deposits, he is not liable to account for rent to his co-tenant; but if he receives any rent, or other profit, or commits any waste; or if he, by any means, deprives his co-tenant of the use of his fair proportion of the property, or if he appropriates all to his exclusive use, or if the property is of such a character as that the use of it must necessarily be exclusive, then he is liable to account to his co-tenant.

Adverse possession.

§ 2277. There can be no adverse possession against a co-tenant until actual ouster, or exclusive possession after demand, or express notice of adverse possession; in either of which events the co-tenant may sue at law for his possession.

Partition.

§ 2278. Upon application by any tenant in common, the Superior Court may order partition as hereinafter provided.

CHAPTER VIII.

OF TRUST ESTATES.ARTICLE 1.—*Of their Creation and Nature.*ARTICLE 2.—*Of Trustees, Appointment, Powers, etc.*

ARTICLE I.

OF THEIR CREATION AND NATURE.

SECTION.

2279. Definition.
 2280. For whom.
 2281. Separate estate.
 2282. Expressed or implied.
 2283. Definition.
 2284. Express—how created.
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SECTION.

2286. Resulting trusts.
 2287. Execution of trusts.
 2288. Executed and executory.
 2289. Use upon use.
 2290. Implied trusts.
 2291. Parol evidence.
 2292. Precatory words.

§ 2279. Estates may be created, not for the benefit of the grantee, but for the use of some other person. They are termed trust estates. No formal words are necessary to create such an estate. Whenever a manifest intention is exhibited that another person shall have the benefit of the property the grantee shall be declared a trustee. Definition.

§ 2280. Trust estates may be created for the benefit of any female, or minor, or person *non compos mentis*. For whom.

§ 2281. No words of separate use are necessary to create a trust estate for the wife. The appointment of a trustee, or any words sufficient to create a trust, shall operate to create a separate estate. Separate estates.

§ 2282. Trusts are either express or implied. Express, etc.

§ 2283. Express trusts are those created and manifested by agreement of the parties. Implied trusts are such as are inferred by law from the nature of the transaction, or the conduct of the parties. Definitions.

§ 2284. All express trusts must be created or declared in writing. Express, etc.

§ 2285. An express trust may depend for its operation upon a future event, and is then a contingent trust. It may operate in favor of additional or other beneficiaries upon specified contingencies, and is then a shifting trust. Contingent and shifting.

Article 1.—Trust Estates—their Creation and Nature.

§ 2286. An implied trust is sometimes for the benefit of the grantor, or his heirs, or heirs or next of kin of a testator, and is then a resulting trust.

§ 2287. Trusts are either executed or executory. In the former, every thing has been done by the trustee required to secure the property, or render certain the interest of the beneficiaries, and all that remains for him to do, is to preserve the property and execute the beneficial purposes. In executory trusts, something remains to be done by the trustee, either to secure the property, to ascertain the objects of the trusts, or to distribute according to a specified mode, or some other act, to do which requires him to retain the legal estate.

§ 2288. In an executed trust, for the benefit of a person capable of taking and managing property in his own right, the legal title is merged immediately into the equitable interest, and a perfect title vests in the beneficiary according to the terms and limitations of the trust.*

§ 2289. The technical rule that a trust can not be limited on a trust, and that, consequently, only the first trust is executed, is abolished.

§ 2290. Trusts are implied—

1. Whenever the legal title is in one person, but the beneficial interest, either from the payment of the purchase money or other circumstances, is either wholly or partially in another.

2. Where, from any fraud, one person obtains the title to property which rightly should belong to another.

3. Where, from the nature of the transaction, it is manifest that it was the intention of the parties that the person taking the legal title shall have no beneficial interest.

4. Where a trust is expressly created, but no uses are declared, or are ineffectually declared, or extend only to a part of the estate, or fail from any cause, a resulting trust is implied for the benefit of the grantor, or testator, or his heirs.

§ 2291. In all cases when a trust is sought to be implied, the Court may hear parol evidence of the nature of the transaction, or the circumstances, or conduct of the parties, either to imply or rebut a trust.

§ 2292. Precatory or recommendatory words will create a trust if

* Is this Section affected by the repeal of part of Section 2287 of old Code, (2280 of this) as to trusts for males of sane mind? See Acts of 1863-4, p. 47.

Article 2.—Trustees—their Appointment, Powers, etc.

they are sufficiently imperative to show that it is not left discretionary with the party to act or not, and if the subject-matter of the trust is defined with sufficient certainty, and if the object is also certainly defined, and the mode in which the trust is to be executed.

Precatory words.

ARTICLE II.

OF TRUSTEES—THEIR APPOINTMENT, POWERS, ETC.

SECTION.

- 2293. Trustees appointed.
- 2294. Proceeding at chambers.
- 2295. Trustees of corporations.
- 2296. New assignees or trustees.
- 2297. Inventory.
- 2298. Return to Ordinary.
- 2299. Liability of naked trustee.
- 2300. Duty of trustees.
- 2301. Sales by trustees.
- 2302. The same.
- 2303. Purchaser with notice.
- 2304. Investments in stocks.

SECTION.

- 2305. Trustee may contract for labor.
- 2306. Profits made.
- 2307. Following funds.
- 2308. Disposition of income.
- 2309. Lien.
- 2310. Debts of *cestui que trust*.
- 2311. Sale by beneficiary.
- 2312. Lien on estates for trust funds.
- 2313. Acceptance of trust.
- 2314. Extent of trustee's estate.
- 2315. Relief of securities on bond.
- 2316. Compensation.

§ 2293. Trustees may be appointed by the party creating the estate, and he may confer the power of removal and appointment, by deed to the beneficiaries, prescribing the mode of its execution.

Trustees appointed, etc.

§ 2294. The Judge of the Superior Court of each County, has power, either in term or at chambers, on petition by all the beneficiaries in a deed, who have arrived at years of discretion, and on proper notice to the trustee, if there be one residing in this State, to remove and appoint trustees, prescribing in each case such terms, and requiring such bonds as in his discretion he may think proper, but in no case omitting to require a bond where minor beneficiaries are, or may be interested. [All such bonds shall be made payable to the Ordinary of the County where the Judge requiring the same shall determine, and such Ordinary shall act in relation to taking such bonds and receiving security, as such Judge may direct.] (a) The petition, notice, order and other papers in such cases, if done in vacation, shall be returned to the Clerk of the Superior Court, to be recorded in the book of the minutes of said Court.

Proceeding at chambers.

Trustees bonds.

§ 2295. [Whenever the office of trustee, in any incorporated company, may have or shall hereafter become vacant by death,

Courts may fill vacancies of trustees.

Article 2.—Trustees—their Appointment, Powers, etc.

resignation, or otherwise, and the same for any cause can not be filled under the provisions of the charter of incorporation, the Judge of the Superior or Inferior Courts of the Counties or Judicial Districts in which said incorporation may be situated, shall have power to fill such vacancies upon petition to said Judge of either of said Courts, showing the circumstances which render the appointment of a trustee, or trustees, necessary and proper.] (a)

New assignees and trustees may be appointed.

§ 2296. [In all cases of assignments for the benefit of creditors, heretofore or hereafter made, and in all cases of any trust, where the sole or surviving trustee, or assignee, shall have departed this life, or removed beyond the jurisdiction of the Courts of this State, the Superior Courts of the several Counties in this State shall have full power and authority, when sitting either as a Court of Law or Equity, upon the petition of two or more of the parties interested in such assignment or trust, and on such notice as the Court shall direct, in a summary manner, to appoint a new trustee, or trustees, in the place of such deceased or non-resident trustee; and such new trustee shall have all the authority, and be subject to all the pains and penalties of such deceased or non-resident trustee, or assignee; and all laws or enactments shall be as applicable, and in as full force in respect to the new as to the old assignee or trustee; and said Court may in its discretion require bond and security of such assignee or trustee.] (b)

Inventory by trustees.

§ 2297. [It shall be the duty of all trustees, within three months after the trust property comes into their possession, to return to the Court of Ordinary where they reside, an inventory of all the trust property in their hands, received by them, which shall be recorded under the same regulations as inventories of administrators and executors.] (c)

Returns to Ordinary.

§ 2298. All trustees having in their hands a pecuniary fund, as a part of the trust estate, or receiving any sums of money as income or proceeds of such estate, shall make returns to the Ordinary, and receive commissions on such returns, under the same rules and regulations as are prescribed for guardians; and such returns, when allowed and recorded by the Ordinary, shall be *prima facie* evidence in their favor as to their correctness.

Liability of naked trustees.

§ 2299. A naked trustee, holding the title when possession of the property is with the beneficiary, is in no way responsible for its income or preservation, except where there are beneficiaries in

Article 2.—Trustees—their Appointment, Powers, etc.

remainder, or who are minors, and in such case he is responsible only for gross neglect.

§ 2300. Trustees having possession of the trust property are bound to ordinary diligence in the preservation and protection of the same. Duty of trustees.

§ 2301. A trustee, unless expressly authorized by the act creating the trust, or with the voluntary consent of all the beneficiaries, has no authority to sell or convey the corpus of the trust estate, but such sales must be by virtue of an order of the Court of Chancery, upon a regular application to the same. Such application may be made to the Judge in vacation, on full notice to all parties in interest, and the order for such sale may be granted at chambers, the proceedings to be recorded as above provided, on application for appointment of trustees. Sales by trustees.

§ 2302. Sales by trustees, unless otherwise provided in the order, shall be made under the same rules and restrictions, in every respect, as provided for sales by administrators of estates. The same.

§ 2303. The purchaser from a trustee, with notice actual or constructive of the trust, holds as trustee for the beneficiaries; if the purchase be *bona fide*, and without notice, the purchaser holds the property freed from the trust. Purchaser with notice.

§ 2304. Any trustee holding trust funds may invest the same in stocks, bonds, or other securities, issued by this State, making a true return of the price paid, and time of purchase. Such investments shall be free from taxation so long as held for the trust estate. Any other investments of trust funds must be made under an order of the Superior Court, either in term, or granted by the Judge in vacation, or else at the risk of the trustee. Investment in stocks.

§ 2305. [Trustees may make contracts for labor or service with persons of color, or with white persons, for the benefit of the estates of their *cestui que trust*, upon such terms as they may deem best; and all such contracts, made in good faith, shall be a charge upon and bind said estates, whenever the same are approved by the Ordinary of the County.] (a) May contract for labor.

§ 2306. The trustee must not use the trust funds to his own profit. He is liable to account for all such profits made. Profits made

§ 2307. The beneficiary of a trust estate may follow the funds wherever they can be traced, and, at his option, may affirm or reject an unauthorized investment by the trustee. Following funds.

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Article 2.—Trustees—their Appointment, Powers, etc.

Disposition of income. § 2308. Trustees are authorized, out of the income of the estate, to pay all debts incurred for its protection and preservation, and to appropriate a sufficiency of the balance for the support and maintenance of the beneficiaries of the trust. They can not encroach upon the corpus of the estate, except by order of the Chancery Court.

Lien. § 2309. Trustees are not authorized to create any lien upon the trust estate, except such as are given by law.

42 223 Debts of cestui que trust. § 2310. A beneficiary having possession of the trust estate, or when the trustee fails or refuses to provide for its protection and preservation, or for the support and maintenance of the beneficiary, may, though a *feme covert*, contract debts for these purposes. The trust estate of such beneficiary shall be liable for the payment of such debts.

Sale by beneficiary. § 2311. A beneficiary of a trust estate, of full age and of sound mind, may voluntarily sell and convey any portion of her interest in such estate to any person, except her husband or her trustee, and, upon application to the Court, such sale may be confirmed, in the discretion of the Court, and the proceeds reinvested under order of the Court.

496 Lien on estates for trust funds. § 2312. The estate of a trustee, dying chargeable with trust funds in hand, shall be appropriated, first, to the payment of such indebtedness, after the funeral expenses, in preference to all other liens and claims whatever.

Acceptance of trust. § 2313. The acceptance of a trust is necessary to constitute a person trustee: it may be done by acts, as well as words. After acceptance, no disclaimer will remove the character of trustee.

Extent of trustee's estate. § 2314. Generally, a trustee takes an estate as large and extended as the necessities of the trust require, and no more.

Relief of sureties. § 2315. Sureties on the bonds of trustees may be relieved from liability by the Judge of the Superior Court, either at a regular term, or at chambers, upon the same terms and conditions as prescribed for the relief of sureties on the bonds of guardians by the Ordinary.

Compensation. § 2316. Trustees, for their service, shall be entitled to the same compensation as guardians for similar services.*

* As to trustees of churches and religious societies, and their responsibility, see Act of 1805, Cobb's New Digest, p. 899; and Act of 1856, Laws of 1855-6, p. 272.

TITLE VI.

OF TITLE AND THE MODE OF CONVEYANCE.

CHAPTER 1.—*Of Grants.*CHAPTER 2.—*Of Title by Will.*CHAPTER 3.—*Of Title by Descent, Administration, etc.*CHAPTER 4.—*Of Title by Judicial Sale.*CHAPTER 5.—*Of Title by Contract.*CHAPTER 6.—*Of Title by Escheat and Forfeiture.*CHAPTER 7.—*Of Title by Prescription.*CHAPTER 8.—*Of Conveyances.*

CHAPTER I.

OF TITLE BY GRANT.

ARTICLE 1.—*Generally.*ARTICLE 2.—*Of Head Rights.*ARTICLE 3.—*Of Land Lotteries.*ARTICLE 4.—*Of Processioning.*

ARTICLE I.

GRANTS GENERALLY

SECTION.

- 2317. What is title.
- 2318. And perfect title.
- 2319. Origin in grant.
- 2320. Form of grants.
- 2321. Errors in grants may be corrected.
- 2322. Proceeding for this purpose.
- 2323. Effect of objections.
- 2324. Issue—how formed and tried.

SECTION.

- 2325. Question of law—how decided.
- 2326. Filing of papers.
- 2327. If original grant is lost.
- 2328. Effect of corrected grant.
- 2329. How grants may be set aside.
- 2330. How impeached.
- 2331. Nothing taken by implication.
- 2332. Presumption of a grant.

§ 2317. Title is the means whereby a person's right to property is established. *2342 230. Story 439* What is title

Article 1.—Grants Generally.

And perfect title. § 2318. One person may have the right of possession and another the right of property. In the union of the two consists a perfect title.

Origin in grant. § 2319. The title to all lands in this State originates in grants from the Government; and since its independence, from the State.

Form of grants. § 2320. The form of grants heretofore used in this State is hereby established, and a substantial compliance with the same shall be held sufficient.

Errors in grants may be corrected. § 2321. The following errors in the issuing and recording of grants may be corrected—viz: Any error in the name or residence of the grantee, or the location, or character, or boundary of the land, or in any other matter or thing connected with the application for or issuing of the grant, or in recording or transcribing the names of applicants for draws, or of fortunate drawers in the several land lotteries, or any omission in any of the offices, or on the part of any of the agents of the State, or any other mistake in the recording thereof, or any other error whereby the true grantee is deprived of or jeopardized in his right.

Proceeding for this purpose. § 2322. In all such cases the application must be made in writing to the Governor, and evidence produced to him that notice in writing of the nature and time of the application has been served upon every person who may be in any manner interested in the question; and if no objection be filed, and satisfactory evidence of the error or mistake be produced and submitted in writing, the Governor may pass an order requiring the error to be corrected, and, if necessary, a new grant to be issued upon the first grant being delivered up to be canceled.

Effect of objections. § 2323. If objections be filed, and it shall appear that such correction will interfere with the vested rights of other *bona fide* claimants, the Governor shall refuse to make such correction, but leave the parties to their judicial remedies.

Issue—how formed and tried. § 2324. If the fact is doubtful as to the interference with the vested rights of others, the Governor may cause an issue to be made, and to certify the same to the Superior Court of the County where the land lies, requiring the Court to cause the same to be tried before a special jury, and have their verdict certified to him.

Question of law — how decided. § 2325. If the doubt arises upon a question of law, the Governor may certify the same to the Judges of the Supreme Court, and request their written opinion of the same to be returned to him.

*Hand for title will all the purchase money paid in a complete title to land.
25 Feb 63. 3d Kelly J.*

Article 1.—Grants Generally.

§ 2326. All the papers and evidence upon every such application shall be filed and preserved in the Executive Office. Filing of papers.

§ 2327. If the applicant for a corrected grant shall not be able to produce the original grant to be canceled, the Governor may issue the corrected grant, after advertising for six months at the expense of the applicant, for any objection to be filed. If original grant is lost

§ 2328. All corrected grants shall take effect from the time of the issue of the original grant, but shall not affect the vested rights of *bona fide* purchasers without notice, and all corrected grants shall bear upon their face a note of the correction made, and the date of the Executive order under which it was made. Effect of corrected grants

§ 2329. Grants issued by the State may be set aside by the Superior Court of the County where the land lies upon a writ of *scire facias*, on the ground that the same were obtained by fraud or willful misrepresentations by the grantee, or those in privity with him, to the officers of the State; or on the ground of collusion between the grantee and the said officers; or of fraud, accident, or mistake by the officers known to the grantee. How grants may be set aside.

§ 2330. Grants may be impeached before the Courts where they are void upon their face, or are issued without authority of law, or against a prohibition in a statute, or for property to which the State had no title. But mere irregularities in the proceedings to obtain them shall not be inquired into, nor can a mistake in the name of the grantee be proved by parol. How impeached.

§ 2331. A grantee of lands or a franchise, takes nothing by implication, but is confined to the terms of his charter; but every presumption is in favor of a grant. Nothing taken by implication.

§ 2332. Twenty years' possession of land under a claim of right, when the same is subject to entry and grant, shall authorize the Courts to presume a grant. Presumption of a grant

ARTICLE II.

OF HEAD RIGHTS.

SECTION.

- 2333. Lands subject to head rights.
- 2334. Irregularities do not avoid, etc.
- 2335. Former acts continued.
- 2336. Inferior Court, etc.
- 2337. Application for warrant, etc.
- 2338. Preference to first filed.
- 2339. Caveat.

SECTION.

- 2340. Warrant.
- 2341. His certificate if the land is granted.
- 2342. False return by surveyor.
- 2343. Duty of Clerk.
- 2344. Grant—how obtained.
- 2345. Interest not subject to levy, etc.
- 2346. Grants must be had in two years.

Article 2.—Head Rights.

§ 2333. The lands heretofore declared by law to be subject to entry under the various acts granting head rights, shall so continue without any further act extending the time.

§ 2334. All grants heretofore issued on warrants granted by Land Courts, professing to be constituted under said acts, shall be held valid and good, notwithstanding one or more Justices of the Inferior Court may have constituted the Land Court, and notwithstanding any other irregularity not the result of or amounting to fraud.

§ 2335. The several acts opening Land Courts in different Counties, and all acts amendatory of the same, shall remain in force after the adoption of this Code in the same manner as if the same were of force prior to such adoption, except so far as changed by this article.

§ 2336. The Inferior Court of each County shall hereafter constitute the Land Court, and all the powers of the Land Court are hereby transferred to said Inferior Court, to be exercised only at a regular term thereof.

§ 2337. All applications for warrants shall be made in writing to said Court, and shall specify as accurately as possible, the vacant land for which a warrant is sought; and written notice, at least ten days before the session of the Court, shall be served by the Sheriff or his deputy on the person in possession, if any, and on each owner of land adjoining the land alleged to be vacant, if such owner resides in the County. If he is a non-resident, that fact shall be returned by the officer, and the Court shall adopt such means as it deems proper to convey notice to him. The record must show the names of the persons notified, and the grant shall be valid against no other owner of adjacent lands.

§ 2338. All such applications shall be filed by the Clerk as received, and when two or more applications are filed for the same land the first filed shall have the preference, unless one of the applicants be in actual or constructive possession, in which case he shall have the preference.

§ 2339. Any owner of the adjacent land or lands covered by the application, may file a caveat to the issuing a warrant, or to the granting of the land, at any time before the certified plat of the same is transmitted to the office of the Secretary of State, and such application and caveat shall be transmitted by said Court to the Superior Court of the County, to be there tried as

Article 2.—Head Rights.

other land cases. The final judgment of the Superior Court shall be certified by its Clerk back to the Land Court.

§ 2340. If no caveat is filed, or if filed, is not sustained, the said Inferior Court shall issue a warrant directed to the County Surveyor, requiring him to view the land alleged to lie vacant, and if upon due examination of the adjoining surveys he is satisfied that the same is vacant, to make an accurate survey and plat of the same and return the plat to the said Court with his official certificate as to its accuracy, the time of survey, and his opinion that the same is vacant. Notice of the time of survey shall be given to all the owners of adjacent lands, resident within the County, by the County Surveyor at least ten days before the time appointed, and like notice of any delay or postponement of the time.

Warrant.

Duty of Surveyor.

§ 2341. If the County Surveyor shall be satisfied that the land is not vacant, he shall certify the fact to the Court issuing the warrant, with the name of the grantee or grantees, to whom, in his opinion, the same has been granted, and return the warrant to the Court. The applicant, if he sees proper, may take issue upon such return, and such issue shall be transmitted to the Superior Court, in like manner as a caveat, to be there tried. The Superior Court shall give notice in the most practicable manner to the owner or owners of the old grant or grants of the pendency of such issue before the trial of the same. If the issue is found for the applicant the survey shall proceed.

His certificate if the land is granted.

Issue thereon.

§ 2342. Any County Surveyor who shall knowingly or without due precaution certify as vacant, land covered by a former grant shall be liable, with his sureties on his bond, to the owner of such land for double the value of the same, at any time before the trial of the cause.

False return by Surveyor.

§ 2343. It shall be the duty of the Clerk of the Inferior Court to record accurately all such plats as shall be ordered to be sent to the Secretary of State's office to be granted.

Duty of Clerk.

§ 2344. When a survey of vacant land is returned by the County Surveyor, and no caveat is filed, or if filed is not sustained, the Court shall pass an order declaring the application sustained and the report of the Surveyor confirmed, and direct the plat of the survey, together with a certified copy of the order, to be forwarded to the office of the Secretary of State, by whom it shall be recorded, and a grant to the land to the applicant, or his assignee, shall be made and issued as in other cases.

Grant—how obtained.

§ 2345. Though subject to be assigned, the interest of the ap-

Article 3.—Land Lotteries.

Interest not subject to levy and sale
plicant in the land surveyed shall not be subject to levy and sale prior to the issuing of the grant.

§ 2346. If a grant is not applied for in two years from the passing of the final order by the Land Court, the land shall be considered vacant, and subject to resurvey under head rights.

Grants must be had in two years.

ARTICLE III.

OF LAND LOTTERIES.

SECTION.

2347. Former acts continued.

SECTION.

2348. Reverted lots.

Former acts continued.

§ 2347. The several acts in reference to the various land lotteries, heretofore authorized by this State, so far as the same are now in force, shall remain of the same effect and validity as if this Code was not adopted, except so far as the same may be modified by the operation thereof.

Reverted lots.

§ 2348. All lands reverting to the State under the operation of these laws, and not yet disposed of, and all reserves still belonging to the State, shall remain the property of the State, until further action by the Legislature. And all such, together with all ungranted lands now within the bounds of the State, and not subject to grant under its laws, are hereby pledged and set apart to be appropriated by the Legislature to the cause of education in this State.

ARTICLE IV.

PROCESSIONING.

SECTION.

2349. Appointment of proccessioners.

2350. What is proccessioning.

2351. Surveyor's duty.

2352. Rules in disputed lines.

2353. General reputation—when evidence.

SECTION.

2354. Adverse possession.

2355. Protest and appeal, etc.

2356. Fees.

2357. Return.

2358. Land cut off by running stream.

Appointment of proccessioners.

§ 2349. The Justices of the Inferior Court of each County, or any three of them, shall, at the second term of their Court, on every second year, appoint three suitable persons in every militia district in the County, who shall be proccessioners of land for that district, until their successors are appointed. Vacancies may be filled in the same manner at any time. If none are appointed the

Article 4.—Processioning.

Court shall appoint, at any regular term, on the application of any land owner.

§ 2350. Every owner of land, any portion of which lies in any district, though the remainder lies in an adjoining district, or an adjoining County, who desires the lines around his entire tract to be surveyed and marked anew, shall apply to the processioners of said district to appoint a day when a majority of them, with the County Surveyor, will trace and mark the said lines. Ten days' written notice of the time of such running and marking shall be given to all the owners of adjoining lands, if resident within this State; and the processioners shall not proceed to run and mark such lines until satisfactory evidence of the service of such notice shall be produced to them. What is processioning.

§ 2351. It shall be the duty of the County Surveyor, with the processioners, taking all due precaution to arrive at the true lines, to trace out and plainly mark the same. The Surveyor shall make out and certify a plat of the same, and deliver a copy thereof to the applicant; and in all future disputes arising in reference to the boundary lines of such tract, with any owner of adjoining lands, having due notice of such processioning, such plat, and the lines so marked, shall be *prima facie* correct, and such plat, certified as aforesaid, shall be admissible in evidence, without further proof. Surveyor's duty. Plat. Evidence.

§ 2352. In all cases of disputed lines the following rules shall be respected and followed: Natural landmarks, being less liable to change, and not capable of counterfeit, shall be the most conclusive evidence; ancient or genuine landmarks, such as corner station or marked trees, shall control the course and distances called for by the survey. If the corners are established, and the lines not marked, a straight line, as required by the plat, shall be run, but an established marked line, though crooked, shall not be overruled; courses and distances shall be resorted to in the absence of higher evidence. Rules in disputed lines.

§ 2353. General reputation in the neighborhood shall be evidence as to ancient landmarks of more than thirty years' standing, and acquiescence for seven years, by acts or declarations, of adjoining land owners, shall establish a dividing line. General reputation—when evidence. Acquiescence.

§ 2354. Where actual possession has been had, under a claim of right, for more than seven years, such claim shall be respected, and the lines so marked as not to interfere with such possession. Adverse possession.

Article 4.—Processioning.

Protest and
appeal to Su-
perior Court

§ 2355. Any owner of adjoining lands who may be dissatisfied with the lines, as run and marked by the processioners and surveyor, may file his protest thereto with the processioners, within thirty days after such lines are run and marked, specifying therein the lines objected to, and the true line, as claimed by him; and it shall be the duty of the processioners to return all the papers, including the plat made by the surveyor, with such protest, to the Clerk of the Superior Court of the County or Counties where the disputed land lies, (copies being sent to the adjoining County,) and it shall be the duty of the Clerk to enter the same on the issue docket, as other causes, to be tried in the same manner, and under the same rules as other cases. The verdict of the jury, and the judgment of the Court, shall be framed to meet the issue tried and decided.

Fees.

§ 2356. The applicant shall pay to each of the processioners one dollar per day for his services, and to the County Surveyor two dollars per day for his services. If a protest is filed, the costs of the Court shall bide the issue.

Return

§ 2357. The processioners shall make a return of their acts, together with the plat of the surveyor, to the Clerk of the Inferior Court of the County, to be kept on file in his office.

Land cut off
by running
stream.

§ 2358. When any water course is one of the boundary lines of a tract of land, and its course shall have been changed by nature or art, so that its present channel shall cut off a part of said land, the processioners and surveyor shall certify the fact, and the plat of the surveyor shall plainly mark the original and present channels, designating the exact quantity of land so cut off.

CHAPTER II.

OF TITLE BY WILL.

ARTICLE 1.—*Of the Nature of Wills, etc.*

ARTICLE 2.—*Of Probate and its Effects.*

ARTICLE 3.—*Of the Executor.*

ARTICLE 4.—*Of Devises and Legacies.*

ARTICLE 5.—*Of Revocation.*

ARTICLE 6.—*Of Nuncupative Wills.*

Article 1.—Wills—by whom and how Executed.

ARTICLE I.

OF THE NATURE OF WILLS—BY WHOM AND HOW EXECUTED.

SECTION.

- 2359. What is a will.
- 2360. Form.
- 2361. May be both deed and will.
- 2362. Mutual wills.
- 2363. When a will takes effect.
- 2364. Power of testator.
- 2365. Will may be good in part, etc.
- 2366. Will should be voluntary.
- 2367. Fraud vitiates.
- 2368. Mistake vitiates *pro tanto*.
- 2369. Codicil.
- 2370. Who may make a will.
- 2371. Infants.
- 2372. Insane persons.

SECTION.

- 2373. Eccentricity, imbecility, etc.
- 2374. Amount of capacity necessary.
- 2375. Wills of married women.
- 2376. Conviction of crime, etc.
- 2377. Of blind mutes.
- 2378. Interpreter.
- 2379. Formalities of execution.
- 2380. Attested by illiterate witnesses.
- 2381. Time of competency of witnesses.
- 2382. Effect of witness being legatee.
- 2383. Knowledge of contents.
- 2384. Charitable devises.
- 2385. Discretion to executors.

§ 2359. A will is the legal expression of a man's wishes as to the disposition of his property after his death. What is a will.

§ 2360. No particular form of words is necessary to constitute a will; and in all cases to determine the character of an instrument, whether it is testamentary or not, the test is the intention of the maker, from the whole instrument, read in the light of the surrounding circumstances. If such intention be to convey a present estate, though the possession be postponed until after his death, the instrument is a deed; if the intention be to convey an interest accruing and having effect only after his death, it is a will. Form.
When it is a will.

§ 2361. An instrument may have effect in part as a deed, and in part as a will, even as to the same property. May be both deed and will.

§ 2362. Mutual wills may be made either separately or jointly, and in such case the revocation of one is the destruction of the other. Mutual wills.

§ 2363. A will takes effect instantly upon the death of testator, however long the probate may be postponed. When a will takes effect.

§ 2364. A testator, by his will, may make any disposition of his property not inconsistent with the laws or contrary to the policy of this State; he may bequeath his entire estate to strangers to the exclusion of his wife and children, but in such case the will should be closely scrutinized, and upon the slightest evidence of aberration of intellect, or collusion, or fraud, or any undue influence, or unfair dealing, probate should be refused. Power of testators.

§ 2365. If a will be legal in part and illegal in part, that which

Article 1.—Wills—by whom and how Executed.

Will may be good in part and void in part. is legal may be sustained, unless the whole will so constitute one testamentary scheme that the legal alone can not give effect to the testator's intention ; in such case the whole will fails.

Will should be voluntary § 2366. The very nature of a will requires that it should be freely and voluntarily executed : hence any thing which destroys this freedom of volition invalidates a will ; such as fraudulent practices upon testator's fears, affections, or sympathies ; duress, or any undue influence whereby the will of another is substituted for the wishes of the testator.

Fraud vitiates. § 2367. A will procured by misrepresentations or fraud of any kind to the injury of the heirs at law, is void.

Mistake vitiates *pro tanto*. § 2368. A will executed under a mistake of facts as to the existence or conduct of the heirs at law of the testator is inoperative, so far as such heir at law is concerned, but the testator shall be deemed to have died intestate as to him.

Codicil. § 2369. A codicil is an addition or supplement to a will, either to add to, take from, or alter the provisions of the will. It must be executed with the same formality as a will, and when admitted to probate, forms a part of the will.

Who may make a will. § 2370. Every free person is entitled to make a will, unless laboring under some disability of the law ; this disability arises either from a want of capacity, or a want of perfect liberty of action.

Infants. § 2371. Infants under fourteen years of age are considered wanting in that discretion necessary to make a will.

Insane persons. § 2372. An insane person can not generally make a will. A lunatic may, during a lucid interval. A monomaniac may make a will, if the will is in no way the result of or connected with that monomania. In all such cases it must appear that the testament does speak the wishes of the testator, unbiased by the mental disease with which he is affected.

Eccentricity, imbecility, etc. § 2373. Eccentricity of habit or thought does not deprive a person of the power of making a testament ; old age, and the weakness of intellect resulting therefrom, does not, of itself, constitute incapacity. If that weakness amounts to imbecility, the testamentary capacity is gone. In cases of doubt as to the extent of this weakness, the reasonable or unreasonable disposition of his estate should have much weight in the decision of the question.

§ 2374. An incapacity to contract may co-exist with a capacity to make a will ; the amount of intellect necessary to constitute

Article 1.—Wills—by whom and how Executed.

testamentary capacity, is that which is necessary to enable the party to have a decided and rational desire as to the disposition of his property. His desire must be decided, in distinction from the wavering, vacillating fancies of a distempered intellect. It must be rational, in distinction from the ravings of a madman, the silly pratings of an idiot, the childish whims of imbecility, or the excited vagaries of a drunkard.

Amount of capacity necessary.

§ 2375. Married women are incapable of making wills for want of perfect liberty of action, being presumed to be under the control of their husbands. A married woman may make a will in the following cases—

Wills of married women.

1. Where express power to will her separate estate is reserved or granted to her in the instrument creating the same, or by marriage contract.

2. When having a separate estate, absolutely, or an estate in expectancy, her husband consents to her disposing of the same by will.

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3. Where her will is in execution of a power vested in her.

4. Whenever by reason of the abandonment of her husband, or a divorce from bed and board, or for other cause, the law declares her to have the right of a *feme sole* as to her own earnings.

§ 2376. Conviction of crime in no case deprives a person of the power of making a will; nor does any imprisonment, unless such imprisonment be used as duress to compel the person to make a testament different from his own will.

Conviction of crime and imprisonment.

§ 2377. A person deaf, dumb, and blind, may make a will in this State; *provided*, the interpreter and scrivener are both attesting witnesses thereto, and are both examined upon the motion for probate of the same. In such cases, strict scrutiny into the transaction should precede the admission of the paper to record.

Of blind mutes.

§ 2378. In all cases when an interpreter is necessary to convey to the scrivener or to the witnesses the wishes of the testator, such interpreter must be a person competent to be a witness, and must be sworn on the motion for probate, if within the jurisdiction of the Court.

Interpreter.

§ 2379. All wills (except nuncupative wills) disposing of realty or personalty, must be in writing, signed by the party making the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the testator by three or more competent witnesses.

Formalities of execution.

§ 2380. A witness may attest by his mark, provided he can

Article 1.—Wills—by whom and how Executed.

Attestation by illiterate witnesses. swear to the same ; but one witness can not subscribe the name of another, even in his presence and by his direction.

Time of competency of witness. § 2381. The question of competency of the witness relates to the time of his testifying ; but a witness competent at the time of attestation, can not defeat the will by rendering himself incompetent prior to the time of probate, but in such cases his testimony shall be received, submitting its credibility to the jury.

Effect of witness being legatee. § 2382. If a subscribing witness is also a legatee or a devisee under the will, the witness is competent, but the legacy or devise is void ; but a husband may be a witness to a will by which a legacy creating a separate estate is given to his wife, the fact going only to his credit.

Knowledge of contents. § 2383. In all cases, a knowledge of the contents of the paper by the testator is necessary to its validity ; but usually, where a testator can read and write, his signature or the acknowledgment of his signature, is sufficient. If, however, the scrivener or his immediate relations are large beneficiaries under the will, greater proof will be necessary to show a knowledge of the contents by the testator.

Charitable devises. § 2384. No person leaving a wife or child, or descendants of child, shall, by will, devise more than one-third of his estate to any charitable, religious, educational, or civil institution to the exclusion of such wife or child ; and in all cases the will containing such devise shall be executed at least ninety days before the death of the testator, or such devise shall be void.

Discretion to executors. § 2385. A testator may by will dispense with the necessity of his executor making inventory or returns ; *provided*, the same does not work any injury to creditors or third persons, other than legatees under the will.

ARTICLE II.

OF PROBATE AND ITS EFFECT.

SECTION.

- 2386. Jurisdiction of Ordinary.
- 2387. Probate in another County.
- 2388. In another form.
- 2389. In solemn form.
- 2390. Limitation of seven years.
- 2391. Probate in vacation.
- 2392. Notice to heirs.
- 2393. Guardian *ad litem* for minors.
- 2394. Examination by commission.

SECTION.

- 2395. Will must be filed.
- 2396. Copy of will when established.
- 2397. Original will to be kept on file.
- 2398. Foreign will.
- 2399. Who may offer a will.
- 2400. When it must be offered.
- 2401. Renunciation final.
- 2402. Admission of executors or legatee.

§ 2386. The Court of Ordinary has exclusive jurisdiction over

Article 2.—Probate and its Effect.

the probate of wills. The residence of testator at his death gives jurisdiction to the Ordinary of that County. Jurisdiction of Ordinary.

§ 2387. If the testator shall die out of the County of his residence, and the witnesses to his will shall reside in the County where he died, the Ordinary of the latter County may receive the probate in common form of such will, and transmit it, certified under his seal of office, together with the original will, to the Ordinary of the County of the testator's residence; and such certified probate shall authorize the latter Court to grant probate and admit to record in common form, and to grant letters testamentary or of administration therein: *provided always*, that no caveat is filed to such probate and record. Probate in another County.

§ 2388. Probate of a will may be either in common or solemn form. In the former case, upon the testimony of a single subscribing witness, and without notice to any one, the will may be proven and admitted to record. But such probate and record is not conclusive upon any one interested in the estate adversely to the will; and if afterward set aside, does not protect the executor in any of his acts further than the payment of the debts of the estate. Purchasers under sales from him, legally made, will be protected if *bona fide* and without notice. In common form.

§ 2389. Probate by the witnesses, or in solemn form, is where, after due notice to all the heirs at law, the will is proven by all the witnesses in existence and within the jurisdiction of the Court, or by proof of their signatures, and that of the testator, the witnesses being dead, and ordered to record; such probate is conclusive upon all the parties notified, and all the legatees under the will who are represented in the executor. In solemn form.

§ 2390. Probate in common form becomes conclusive upon all parties in interest after the expiration of seven years from the time of such probate, except minor heirs at law, who require proof in solemn form and interpose a *caveat* at any time within four years after arrival at age. In such cases, if the will is refused probate and record in solemn form, an intestacy shall be declared only as to such minor, and not as to others whose right to *caveat* is barred by lapse of time. Limitation of seven years.

§ 2391. Probate in common form, may be taken by the Ordinary at any time during vacation, but the order admitting the will to record, and granting letters testamentary, shall be granted only at a regular term. Probate in vacation.

Article 2.—Probate and its Effect.

§ 2392. Notice of a motion for probate in solemn form must be personal, if the party resides in the State, and at least ten days before the term of the Court when the probate is to be made; if the residence be without the State, or unknown, then the Court shall pass such order, as to publication, as will tend most effectually to give notice. The records of the Court shall show the persons notified, and the character of the notice given.

§ 2393. If any of the persons interested as heirs be minors, or of unsound mind, guardians *ad litem* shall be appointed by the Court, or the probate shall not be conclusive as to them.

§ 2394. Witnesses to wills may be examined by commission, in the same cases, and under the same circumstances, as other witnesses in other cases, and the Ordinary shall have power to issue commissions to take testimony, and to compel the attendance of witnesses in like manner with the Superior Court.

§ 2395. Every person having possession of a will must file the same with the Ordinary of the County having jurisdiction; and on failure to do so, the Ordinary may issue process as for contempt, and fine and imprison the person thus withholding the paper, until the same shall be delivered.

§ 2396. If a will be lost or destroyed subsequent to the death, or without the consent of the testator, a copy of the same, clearly proved to be such by the subscribing witnesses and other evidence, may be admitted to probate and record in lieu of the original; but in every such case the presumption is of revocation by the testator, and that presumption must be rebutted by proof.

§ 2397. The original will, when proved and recorded, shall remain on file in the office of the Ordinary, and certified copies thereof shall be evidence in any cause and in any Court in this State.

§ 2398. If a party claims title to personalty in this State, under a will of a non-resident, executed and admitted to probate in another State, a copy of said will, and the probate thereof, and the order admitting the same to record, according to the laws of such other State, when properly certified under the laws of the United States, shall be admitted in evidence in place of the original.

§ 2399. The right to offer a will for probate belongs to the executor, if one be named. If the executor be dead, or non-resi-

Article 2.—Probate and its Effect.

dent, or refuses to act, or none be named, any person interested may offer the will for probate. [A citizen of any other State or Territory of the United States may be nominated, and may act as executor or co-executor of the will of a deceased citizen of Georgia, when such executor has the interest in the estate of the deceased, and will give the bond and comply with the requirements specified in Section 2458 of this Code, in cases of non-resident administrators.] (a) Who may offer a will.

§ 2400. The executor must offer the will for probate as soon as practicable after the death of testator, and must qualify, unless restrained by the will, within twelve months after the same is admitted to record. If he fails to offer it for probate for an unreasonable time, or is not qualified within the time specified, he shall be deemed to have renounced his right as executor. If, however, there are several executors, and one qualifies in the time specified, and afterward dies, or is removed, another may then qualify within twelve months from the decease of his co-executor, and be entitled to all the rights of an originally qualified executor. When it must be offered.

§ 2401. An executor who has, either formally, or by operation of law, voluntarily renounced his trust, can not afterward relieve himself from the effect of such renunciation. Renunciation final.

§ 2402. On the investigation of an issue of *devisavit vel non*, the admission of an executor before qualification, or of a legatee (unless the sole legatee), shall not be admissible in evidence to impeach the will, except the admission be in reference to the conduct or acts of the executor or legatee himself, as to some matter relevant to the issue. Admission of executor, etc.

ARTICLE III.

OF THE EXECUTOR.

SECTION.

- 2403. Power before probate.
- 2404. Appointment—how made.
- 2405. Administrator, with will annexed.
- 2406. Executor *de son tort*.
- 2407. Oath of executor.
- 2408. Marriage of female executrix.

SECTION.

- 2409. *De son tort*.
- 2410. Interest of executor.
- 2411. Bond of executor.
- 2412. Powers, duties, and liabilities.
- 2413. When more than one executor.
- 2414. Foreign executor.

§ 2403. So soon as the probate of the will is made in common form, in vacation, and before it is admitted to record, and before

Article 3.—The Executor.

Power be-
fore pro-
bate.

qualification, the executor named therein may exercise all the powers of a temporary administrator as to the collecting and preserving the estate; but if a *caveat* is filed to the record of the will, pending the investigation of such *caveat*, even though the executor may have been qualified on proof in common form, the Ordinary, in his discretion, may require of him a bond as temporary administrator on such estate.

Appoint-
ment—how
made.

§ 2404. No formal words are necessary to the appointment of an executor. Any expression of confidence by the testator, and a desire that such an one shall carry into effect his wishes, will amount to an appointment as executor. Citizens of this State only are eligible to be executors, except as provided for in Section 2399. An infant may be appointed, but can not qualify until of age, unless expressly directed by the testator.

Adminis-
trator, etc.

§ 2405. If no executor is appointed, or can or will serve, administration, with the will annexed, shall be granted by the Ordinary under the same rules as shall be prescribed for the granting of administration generally; and such administrator, when so appointed, shall have the powers of the executor, except such as manifestly arise from personal trust and confidence placed in the executor named.

Executor
de son tort.

§ 2406. If any person, without authority of law, wrongfully intermeddles with, or converts to his own use the personalty of a deceased individual, whose estate has no legal representative, he shall be held and deemed an executor in his own wrong, and as such shall be liable to the creditors and heirs, or legatees of such estate, for double the value of the property so possessed or converted by him; nor shall such executor be allowed to set off any debt due to him by the deceased, or voluntarily paid by him out of the assets. If such executor dies, his legal representatives shall be liable in the same manner, and to the same extent, as if he was still living.

Oath of
executor.

§ 2407. Every executor and administrator with the will annexed, upon qualification, shall take and subscribe the following oath:

"I do solemnly swear that this writing contains the true last will of the within named A. B., deceased, so far as I know or believe, and that I will well and truly execute the same in accordance with the laws of this State. So help me God."

§ 2408. The marriage of a female executrix abates her letters. The Ordinary, in his discretion, may grant letters of administra-

Article 3.—The Executor.

tion to her husband, with the will annexed. Until the appointment of a representative of the estate, the husband may act in right of his wife, and shall be responsible as if he was executor. Marriage of executrix.

§ 2409. The marriage of an executrix, in her own wrong, does not affect her liability, but the husband shall be jointly liable with her. *De son tort.*

§ 2410. The executor shall take no beneficial interest under any will (except his commission), unless the same be expressly given to him by will; but, in every case, the executor or administrator with the will annexed, shall be entitled to possess and administer the entire estate, although any part thereof be undevise, holding the residuum, after payments of debts and legacies, for distribution according to the laws of this State. Interest of executor.

§ 2411. An executor is not required to give bond on qualification, but the Ordinary, on his own motion, or upon the representation of any person in interest, that an executor is mismanaging the estate, or is about to remove it without the State, may require such executor to show cause why he should not give bond and security for the faithful execution of his trust, and on failure to give bond, when and as required, the Ordinary may revoke his letters and appoint another representative for the estate. The executor who has given bond shall stand on the same footing and be liable to all the rules and regulations hereinafter prescribed in reference to the bonds and sureties of administrators. Bond of executor.

§ 2412. All the provisions of this Code with reference to administrators of estates, prescribing the commissions allowed to them, their duties, powers, and liabilities, the mode of effecting sales, of making and receiving titles to property sold or purchased by their intestates, of investing the funds, of obtaining letters of dismission, [of resigning their trusts,] (a) of removing proceedings to the County of their residence, of compelling settlements before the Ordinary, and in all other matters in their nature applicable to executors, shall be held and taken to apply to and include executors, to the same extent as if they were named therein. Powers, duties, and liabilities.

§ 2413. If several executors are named in the will, one or more qualifying shall be entitled to execute all the trusts confided to all, unless specially prohibited by the will; if more than one qualifies, each is authorized to discharge the usual functions of an executor, When more than one executor.

(a) Acts of 1865-6, pp. 29, 30.

Article 4.—Devises and Legacies.

but all must join in executing special trusts. Each executor is responsible for his own acts only, unless, by his own act or gross negligence, he has enabled or permitted his co-executor to waste the estate.

Foreign
executor.

§ 2414. Executors qualified according to the law of their domicil, upon wills properly admitted to probate in another State, upon filing with the Court a certified copy of such proceedings, shall be entitled to use all the processes and remedies prescribed by the laws of this State, in the same manner as if qualified under the laws of this State; if not filed before suit brought, the Court may allow such certified copy to be filed afterward on such terms as it may prescribe.

ARTICLE IV.

OF DEVISES AND LEGACIES.

SECTION.

- 2415. Assets to pay debts.
- 2416. Effect of, etc.
- 2417. Assent of one.
- 2418. Meaning of words.
- 2419. Gifts of income.
- 2420. Intention of testator.
- 2421. Parol evidence on ambiguities.
- 2422. General and specific legacies.
- 2423. Income goes with corpus.
- 2424. Interest on legacies.

SECTION.

- 2425. After acquired property.
- 2426. Lapsed legacy.
- 2427. Ademption of legacy.
- 2428. Substitution.
- 2429. Election.
- 2430. Conditions.
- 2431. Payment of debts.
- 2432. Bequest of charity.
- 2433. Executory devise.

Assets to
pay debts.

§ 2415. All property, both real and personal, in this State, being assets to pay debts, no devise or legacy passes the title until the assent of the executor is given to such devise or legacy.

Effect of,
etc.

§ 2416. The assent of the executor may be presumed from his conduct, as well as his expressed consent; the executor, however, can not, by assenting to legacies, interfere with the rights of creditors, nor can he, by capriciously withholding his assent, destroy the legacy. In equity the legatee may compel him to assent.

Assent of
one.

§ 2417. If there are several qualified executors, the assent of one vests the title in the legatee, unless the other has actual possession of the property.

Meaning of
words.

§ 2418. No particular words are necessary to a devise or bequest. "Lend" will be construed to mean "give," unless the context requires its restricted meaning.

§ 2419. An unconditional gift of the entire income of property, or interest accruing from a fund, will be construed into a gift of

Article 4.—Devises and Legacies.

the property or fund, unless the provisions of the will require a more limited meaning. *§ 2420*

Gifts of income.

§ 2420. In the construction of all legacies, the Court will seek diligently for the intention of the testator, and give effect to the same, as far as it may be consistent with the rules of law; and to this end the Court may transpose sentences or clauses, and change connecting conjunctions, or even supply omitted words in cases where the clause, as it stands, is unintelligible or inoperative, and the proof of intention is clear and unquestionable; but if the clause, as it stands, may have effect, it shall be so construed, however well satisfied the Court may be of a different testamentary intention. *§ 2421*

Intention of testator.

§ 2421. When called upon to construe a will, the Court may hear parol evidence of the circumstances surrounding the testator at the time of its execution: so the Court may hear parol evidence to explain all ambiguities, both latent and patent.

Parol evidence on ambiguities.

§ 2422. Legacies may be either general or specified. A specific legacy is one which operates on property particularly designated. A gift of money to be paid from a specified fund is nevertheless a general legacy.

General and specific legacies.

§ 2423. The income, profits, or increase of specific legacies, as a general rule, go with the legacy, though the time of enjoyment or of vesting may be postponed.

Income goes with corpus.

§ 2424. A general legacy usually bears interest from the expiration of twelve months from the death of the testator. But when the condition of the estate at that time, as to the payment of debts and legacies, is doubtful, or the fund out of which the legacy is to be paid is unavailable for all the charges made upon it, or any other equitable circumstance intervenes, the general rule yields to the equity and necessity of the particular case. A general legacy to be paid at a future time or event, bears no interest until such time or event.

Interest on legacies.

§ 2425. All property acquired subsequent to the making of the will shall pass under it, if its provisions be sufficiently broad to embrace such property.

After acquired property.

§ 2426. If a legatee dies before the testator, or is dead when the will is executed, but shall have issue living at the death of testator, such legacy, if absolute and without remainder or limitation, shall not lapse, but shall vest in the issue in the same proportions as if inherited directly from their deceased ancestor.

Lapsed legacies.

§ 2427. A legacy is adeemed or destroyed, wholly or in part,

Article 4.—Devises and Legacies.

Ademption
of legacy.

whenever the testator, after making his will during his life, delivers over the property or pays the money bequeathed to the legatee, either expressly or by implication, in lieu of the legacy given; or when the testator conveys to another the specific property bequeathed, and does not afterward become possessed of the same, or otherwise places it out of the power of the executor to deliver over the legacy. If the testator attempts to convey and fails for any cause, the legacy is still valid.

Substitution.

§ 2428. If the testator exchanges the property bequeathed for other of the like character, or merely changes the investment of a fund bequeathed, the law deems the intention to be to substitute the one for the other, and the legacy shall not fail.

Election.

§ 2429. A legatee taking under a will must allow, as far as he can, all the provisions of the will to be executed. Hence, if he has an adverse claim to the will, he will be required to elect whether he will claim under the will, or against it. The mere fact of being a creditor does not constitute a case of election.

Conditions.

§ 2430. A condition *in terrorem* is void, unless there is a limitation over to some other person; in which event the latter takes. Conditions which are impossible, illegal, or against public policy, are void.

Payment
of debts.

§ 2431. Unless otherwise directed, the debts of a testator should be paid out of the residuum. If it prove to be insufficient, then general legacies must abate *pro rata*, to make up the deficiency. If they are insufficient, then specific legacies should abate in the same manner. If the executor has assented to the legacies, and the legatees are in possession; after exhausting the assets in the hands of the executor, the creditor may proceed against each legatee for his *pro rata* share. For the payment of debts, realty and personalty shall be alike liable.

Bequest to
charity.

§ 2432. A devise or bequest to a charitable use will be sustained and carried out in this State; and in all cases where there is a general intention manifested by the testator to effect a certain purpose, and the particular mode in which he directs it to be done fails from any cause, a Court of Chancery may, by approximation, effectuate the purpose in a manner most similar to that indicated by the testator.

Executory
devise.

§ 2433. An executory devise is such a future disposition of property as would fail as a remainder by reason of some technical defect, but which if not violative of the policy of the law, will be sustained when found in a will.

Article 5.—Revocation.

ARTICLE V.

OF REVOCATION.

SECTION.

- 2434. Revocation.
- 2435. Express or resulting.
- 2436. How executed.
- 2437. Cancellation.
- 2438. Intention to revoke.

SECTION.

- 2439. Implied revocation.
- 2440. Inconsistent provisions.
- 2441. Revocation by marriage, etc.
- 2442. Republication—how effected.

§ 2434. A will having no effect until the death of the testator, Revocation. is necessarily revocable by him at any time before his death; and even in case of mutual wills with a covenant against revocation, the power of revocation remains.

§ 2435. A revocation may be either express or resulting. Express or resulting. An express revocation is where the maker by writing or acts annuls the instrument. An implied revocation results from the execution of a subsequent inconsistent will. The former takes effect instantly or independently of the validity or ultimate fate of the will, or other instrument containing it. The latter takes effect only when the subsequent inconsistent will becomes effectual, and hence, if from any cause it fails, the revocation is not completed. 32-156

§ 2436. An express revocation by written instrument must be executed with the same formality and attested by the same number of witnesses as are requisite for the execution of a will. The destruction of a will expressly revoking all former wills does not revive a former will unless subsequently republished. In such How executed. 36-71 cases the republication may be proved by parol. Re-publi- cation.

§ 2437. An express revocation may be effected by any destruction or obliteration of the original will, or a duplicate done by the testator, or by his direction, with an intention to revoke; such intention will be presumed from the obliteration or canceling of a material portion of the will; but if the part canceled be immaterial, such as the seal, no such presumption arises. Cancellation.

§ 2438. In all cases of revocation, the intention to revoke is necessary to make it effectual. An express clause of revocation will not operate upon a testamentary paper where it is manifest that such was not the intention. Intention to revoke.

§ 2439. An implied revocation extends only so far as the inconsistency exists. Any portion of the first will, which can stand consistently with the testamentary scheme, and bequests made in the last, shall remain unrevoked. Implied revocation.

Article 6.—Nuncupative Wills.

Inconsis-
tent provi-
sions. § 2440. When there are inconsistent provisions in the same will the latter must prevail.

Revocation
by mar-
riage, etc. § 2441. In all cases the marriage of the testator, or the birth of a child to him, subsequent to the making of a will in which no provision is made in contemplation of such an event, shall be a revocation of the will.

Re-publica-
tion — h o w
effected. § 2442. A codicil properly executed and annexed to a revoked will shall amount to a republication of the same. Any writing executed with all the formalities required for a will, may operate as a republication. A republication of the same paper in the presence of three witnesses, who shall subscribe as additional at- testing witnesses, shall be good. A parol republication in the presence of the original witnesses to the will shall, be good.

ARTICLE VI.

OF NUNCUPATIVE WILLS.

SECTION.

- 2443. Nuncupative wills—when granted.
- 2444. When proved.

SECTION.

- 2445. Notice to heirs.
- 2446. All property passes.

Nuncupa-
tive wills—
when grant-
ed. § 2443. No nuncupative will shall be good that is not proved by the oaths of at least three competent witnesses that were pre- sent at the making thereof, nor unless it be proved that the tes- tator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in the house of his habitation or dwelling, or where he hath been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his own home, and died before he returned to the place of his dwelling.

When
proved. § 2444. Application for probate of a nuncupative will, must be made before the Court within six months after the death of the testator, and the substance of the testamentary dispositions must be reduced to writing within thirty days after the speaking of the same.

§ 2445. Upon all applications for probate of nuncupative wills,

Article 1.—Inheritable Property, etc.

the same notice must be given to the heirs at law, as required on probates in solemn form of other wills. * Notice to heirs.

§ 2446. All property, real and personal, may pass by nuncupative wills properly made and proved. All property may pass, etc.

CHAPTER III.

OF TITLE BY DESCENT AND ADMINISTRATION.

ARTICLE 1.—*Of Inheritable Property and the Relative Rights, etc.*

ARTICLE 2.—*Of Administration.*

ARTICLE I.

OF INHERITABLE PROPERTY AND THE RELATIVE RIGHTS OF THE HEIRS AND ADMINISTRATOR.

SECTION.

2447. Descent to heir.

2448. Rules of inheritance.

SECTION.

2449. Right of administrator, etc.

2450. May recover of heirs.

§ 2447. Upon the death of the owner of any estate in realty, which estate survives him, the title vests immediately in his heirs at law. The title to all other property owned by him vests in the administrator of his estate for the benefit of the heirs and creditors. Descent to heir.

§ 2448. The following rules shall determine who are the heirs at law of a deceased person: Rules of inheritance.

1. The husband is sole heir of his intestate wife.

2. If the intestate dies without children, or the descendants of children, leaving a wife, the wife is his sole heir.

3. If there are children, or those representing deceased children, the wife shall have a child's part, unless the shares exceed five in number, in which case the wife shall have one-fifth part of the estate. If the wife elects to take her dower, she has no farther interest in the realty.

4. Children stand in the first degree from the intestate, and inherit equally all property of every description, accounting for advancements as hereinafter explained. Posthumous children stand

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upon the same footing with children in being upon all questions of inheritance. The lineal descendants of children stand in the place of their deceased parents; and in all cases of inheritance from a lineal ancestor, the distribution is *per stirpe* and not *per capita*.

5. Brothers and sisters of the intestate stand in the second degree, and inherit, if there is no widow, or child, or representative of child. The half-blood on the paternal side inherit equally with the whole blood. If there be no brother or sister of the whole or half-blood on the paternal side, then those of the half-blood on the maternal side shall inherit. The children or grand-children of brothers and sisters, deceased, shall represent and stand in the place of their deceased parents, but there shall be no representation farther than this among collaterals.

6. The father, if living, inherits equally with brothers and sisters, and stands in the same degree. If there be no father, and the mother is alive, and a widow, she shall inherit in the same manner as the father would. If the mother is not a widow, she shall not be entitled to any portion of such estate, unless it shall be that of the only or last surviving child of the mother, in which event she shall take as if unmarried.

7. In all degrees more remote than the foregoing, the parental and maternal next of kin shall stand on an equal footing.

8. First cousins stand next in degree; uncles and aunts inherit equally with cousins.

9. The more remote degrees shall be determined by the rules of the canon law, as adopted and enforced in the English Courts prior to the fourth day of July, A.D. 1776.*

§ 2449. Upon the appointment of an administrator, the right to the possession of the whole estate is in him, and so long as such administrator continues, the right to recover possession of the estate from third persons is solely in him. If there be no administration, or if the administrator appointed consents thereto, the heirs at law may take possession of the lands, or may sue therefor in their own right.

Right of administrator to possess estate.

§ 2450. The administrator may recover possession of any part of the estate from the heirs at law, or purchasers from them; but in order to recover lands, it is necessary for him to show upon the

May recover of heirs.

*For rules of inheritance among illegitimates, see Title 11, Chapter 11, Article 2.

Section 1.—Different kinds of Administrators, etc.

trial, either that the property sued for has been in his possession, and, without his consent, is now held by the defendant, or that it is necessary for him to have possession for the purpose of paying the debts or making a proper distribution. An order for sale or distribution, granted by the Ordinary after notice to the defendant, shall be conclusive evidence of either fact.

ARTICLE II.

OF ADMINISTRATION.

- SECTION 1.—*Different kinds of Administrators, etc.*
 SECTION 2.—*Of their Appointment, Bonds and Removal.*
 SECTION 3.—*Of Inventories, Appraisements and Returns.*
 SECTION 4.—*Of Managing the Estate and Paying Debts.*
 SECTION 5.—*Of Receiving and Making Titles on Bonds for Titles*
 SECTION 6.—*Of Administrator's Sales.*
 SECTION 7.—*Of Distribution, Advancements, etc., for family.*
 SECTION 8.—*Of Commissions and Extra Compensation.*
 SECTION 9.—*Of Final Settlements and Receipts, etc.*
 SECTION 10.—*Of Letters of Dismission and Resignation.*
 SECTION 11.—*Of Removing Proceedings to another County.*
 SECTION 12.—*Of Foreign Administrators, etc.*

SECTION I.

DIFFERENT KINDS OF ADMINISTRATORS AND RULES FOR GRANTING LETTERS.

SECTION.

2451. Temporary letters.
 2452. Bond of temporary administrator.
 2453. *Pendente lite.*
 2454. *De bonis non.*
 2455. With the will annexed.
 2456. Who are qualified.

SECTION.

2457. Exception.
 2458. Rules for granting letters.
 2459. Clerk—when to be administrator.
 2460. Survivorship among administrators
 2461. Need not be person citing.
 2462. Revenue stamps.

§ 2451. The Ordinary may at any time grant temporary letters of administration upon any unrepresented estate for the purpose of collecting and taking care of the effects of the deceased, to continue and have effect until permanent letters are granted;

Tempora-
ry letters.

Section 1.—Different kinds of Administrators, etc.

and from the order granting temporary letters there shall be no appeal.

§ 2452. [The Ordinary may issue such temporary letters of administration, upon the party or parties to whom they are granted giving good and sufficient bond, with security, for double the amount of all the personal property belonging to the estate, other than real estate.] (a)

Pendente lite. § 2453. Pending an issue of *devisavit vel non*, upon any paper propounded as a will, temporary letters of administration may be granted, unless the will has already been admitted to probate in common form and letters testamentary issued.

De bonis non. § 2454. Administration *de bonis non* is granted upon an estate already partially administered, and, from any cause unrepresented.

With the will annexed. § 2455. Administration with the will annexed, is granted where the deceased died testate, but no executor appears to qualify and execute the will. If the executor appointed is disqualified, for want of age, the letters may be granted until the disability ceases.

Who are qualified. § 2456. None but citizens of the United States, residing in the State of Georgia, are qualified to be made administrators, except as provided in the next Section.

Non-residents may qualify. § 2457. [Whenever a citizen of another State or Territory of the United States shall be heir at law, of equal, greater, or sole interest, of any estate of a deceased citizen of Georgia, it shall be lawful for such non-resident citizen to act as administrator of such estate; *provided*, such non-resident shall, before he is qualified to act, be required to give bond and good security in a sum equal to double the amount of such estate, payable to the Ordinary of the County before whom he may qualify in this State. The securities shall be resident citizens of this State, and liable to be sued and proceeded against, in the first instance, for any default, liability, or mismanagement on the part of such non-resident administrator, without joining such administrator in said suit.] (b)

Rules for granting letters. § 2458. In the granting of letters of administration of any kind the following rules shall be observed, the applicant being in all cases, of sound mind, and laboring under no disability:

1. The husband or wife surviving, irrespective of age, shall be first entitled.

2. The next of kin, at the time of the death, according to the

Section 1.—Different kinds of Administrators, etc.

law declarring relationship and distribution, shall be next entitled ; but if the party died testate, the person most beneficially interested under the will shall have the preference. Relations by consanguinity shall be preferred to those by affinity.

3. If there be several of the next of kin equally near in degree, the person selected in writing by a majority of those interested as distributees of the estate, and who are capable of expressing a choice, shall be appointed.

4. If no such preference is expressed, the Ordinary may exercise his discretion in selecting the one best qualified for the office.

5. Where no application is made by the next of kin, a creditor may be appointed ; and among creditors, as a general rule, the one having the greatest interest will be preferred.

6. The persons entitled to an estate may select a disinterested person as administrator, and, if otherwise qualified, he shall be appointed.

7. The person entitled to administration may desire a third person associated with him in the administration, and in such case, if otherwise qualified, he may be appointed.

8. No person shall be appointed administrator who is neither of kin to the intestate, nor a creditor, nor otherwise interested in the grant of administration, except in the cases before provided.

9. If a married woman is next of kin, her husband is entitled to the administration. If a female administratrix or executrix marries, her husband may be appointed administrator. The Ordinary, however, may, in his discretion, grant the letters to any other person entitled thereto under any of the prescribed rules.

10. As a general rule, to cover all cases not specially provided for, the person having the right to the estate ought to have the administration.

11. Temporary letters of administration, pending the litigation on a propounded will, should generally be granted to the nominated executor.

§ 2459. If, from any cause, an estate be unrepresented, and not likely to be represented, the Ordinary may vest the administration in the Clerk of the Superior or Inferior Court of the County, or any other person whom he may deem fit and proper—a citation being first published for thirty days, as in other cases ; and such Clerk, if appointed, shall be compelled to discharge the duties of the office. If, however, such estate does not exceed in value the

Clerk —
when to be
administra-
tor.

Section 2.—The Appointment of Administrators, etc.

Small estates excepted. sum allowed by law to the widow and children, no administration shall be necessary, but the Ordinary shall, by order, set apart the same to the widow and children.

Survivorship among administrators. § 2460. If administration has been granted to more than one, upon the death of either, the right of administration survives to the other.

Need not be person citing. § 2461. Administration may be granted to other persons than him in whose name the citation issues, and without a new citation being published.

Revenue stamps taxed as costs. § 2462. [The amount of all revenue stamps, which have to be used, and are used, upon letters of administration, letters testamentary, etc., shall be taxed as cost against the parties for whom the same are used.] (a)

SECTION II.

OF THE APPOINTMENT OF ADMINISTRATORS—THEIR BOND AND REMOVAL.

SECTION.

- 2463. Application.
- 2464. Citation.
- 2465. Oath.
- 2466. Bond.
- 2467. To be filed.
- 2468. Suits on bonds.
- 2469. Execution—how issued.

SECTION.

- 2470. Provision for new sureties.
- 2471. Joint bond.
- 2472. Defaulting administrator,
- 2473. Liability of sureties, etc.
- 2474. Suits not to abate.
- 2475. If several administrators, etc.
- 2476. Account with heir at law.

Application. § 2463. Every application for letters of administration must be made to the Ordinary of the County of the residence of the deceased, if a resident of this State, and if not a resident, then in some County where the estate, or some portion thereof is.

Citation. § 2464. The Ordinary must issue a citation, giving notice of the application to all concerned, in the gazette in which the County advertisements are usually published, for thirty days, and at the first regular term after the expiration of that time, the application should be heard or regularly continued.

Oath. § 2465. Every administrator, when qualified (which may be done in vacation if appointed at a regular term), shall take and subscribe the following oath or affirmation:

“I do solemnly swear (or affirm) that A. B., deceased, died in-

Section 2.—The Appointment of Administrators, etc.

testate, so far as I know or believe, and that I will well and truly administer on all the estate of the said deceased, and disburse the same as the law requires, and discharge to the best of my ability all my duties as administrator. So help me God.”

§ 2466. Every administrator upon his qualification, shall give Bond. bond, with good and sufficient security, to be judged of by the Ordinary, in a sum equal to double the amount of the estate to be administered; such bond shall be payable to the Ordinary for the benefit of all concerned, and shall be attested by him or his deputy, and shall be conditioned for the faithful discharge of his duty as such administrator, as required by law. A substantial compliance with these requisitions for the bond, shall be deemed sufficient, and no administrator's bond shall be declared invalid by reason of any variation therefrom, as to payee, amount, or condition, where the manifest intention was to give bond as administrator, and a breach of his duty as such has been proved.

§ 2467. All administrators' bonds shall be kept of file by the To be filed. Ordinary, the same being first recorded within six days after their execution, in a book to be kept for that purpose.

§ 2468. The administrator and his sureties shall be held and Suits on bond. deemed joint and several obligors, and may be sued as such in the same action, and if the administrator is beyond the jurisdiction of this State, or is dead, and his estate unrepresented, or is in such position that an attachment may be issued against him, the sureties, or any one or more of them, may be sued. No prior judgment, establishing the liability of the administrator for a *devastavit* by him, shall be necessary before suit against the sureties on the bond.

§ 2469. In all cases of judgments recovered against the administrator and his sureties, the execution issued shall be first levied Execution how issued on the property of the principal, and no levy shall be made on the property of the sureties until there is a return of *nulla bona* as to the principal, unless the plaintiff in *fi. fa.* shall file with the levying officer an affidavit that the surety is actually removing or secreting his property so as to avoid the payment of such judgment.

§ 2470. The provisions hereinbefore made in case the surety on a guardian's bond dies, or becomes insolvent, or removes from the Provisions for new sureties. State, or from other causes becomes insufficient, or in case the surety desires to be relieved as surety, shall be applicable to sure-

Section 2.—The Appointment of Administrators, etc.

ties on administrators' bonds in the same manner and under the same conditions as if they were therein named.

§ 2471. If two or more administrators unite in a common bond, all the sureties are bound for the acts of each administrator, and the administrators themselves are mutual sureties for each other's conduct.

§ 2472. Whenever the Ordinary knows, or is informed by any person having any interest in the estate, that the administrator wastes, or in any manner mismanages the estate, or that he or his sureties are likely to become insolvent, or that he refuses or fails to make returns as required by law, or that for any reason he is unfit for the trust reposed in him, he shall cite such administrator to answer to such charge at some regular term of the Court, and upon the hearing of his return the Ordinary may, in his discretion, revoke the letters of administration, or require additional security, or pass such other order as in his judgment is expedient under the circumstances of each case.

§ 2473. In all cases of removal of an administrator for any cause, the sureties on his bond are liable for his acts in connection with his trust, up to the time of his settlement with an administrator *de bonis non*, or the distributees of the estate.

§ 2474. The revocation of letters of administration shall not abate any suit pending for or against the administrator, but the administrator *de bonis non* shall be made a party in proper cases by *scire facias*, as in case of the death of a party.

§ 2475. If there are more administrators than one, and complaint is made against one only, and his letters are revoked, the entire trust remains in the hands of the other; and with him, as to an administrator *de bonis non* the removed co-administrator must account.

§ 2476. If there be no administrator *de bonis non* appointed, or if he fails to bring the removed administrator to an account, the heirs at law, or distributees, or legatees (if there be a will), may sue directly for an account and settlement.

Section 3.—Inventories, Appraisement, and Returns.

SECTION III.

OF INVENTORIES, APPRAISEMENT, AND RETURNS.

SECTION.

- 2477. Inventory and appraisement.
- 2478. How made and returned.
- 2479. When to be executed.
- 2480. What to contain.
- 2481. Joint inventory.
- 2482. Oath of appraisers.
- 2483. Return of appraisers.

SECTION.

- 2484. Neglect of administrator, etc.
- 2485. Can not take property at valuation.
- 2486. Annual return.
- 2487. Vouchers.
- 2488. Duty of Ordinary.
- 2489. Non-resident or dead administrator.
- 2490. Ordinary's docket.

§ 2477. Immediately upon the qualification of every administrator, the Ordinary should issue a warrant (or if property be in different Counties, warrants,) of appraisement directed to five disinterested freeholders, citizens of the County where the property is, any three of whom shall be qualified to act, requiring them on oath fairly and justly to appraise and value all of the personal property of the deceased produced to them by the administrator, [and also all real estate belonging to the deceased, lying in the County in which administration may be had.] (a)

Inventory
and ap-
praisement.

§ 2478. The administrator shall make a just and true inventory of all the personal property owned and possessed by the deceased at his death, [and all real estate belonging to the deceased, lying in the County in which administration may be had,] (a) and shall produce and exhibit the same, if possible, to the appraisers appointed as aforesaid. And when such inventory and appraisement is returned to the Ordinary, the administrator shall swear, in addition to the usual oath on making returns, that such inventory contains a true account of all the goods and chattels, rights and credits of the deceased, within his hands, possession, or knowledge. [The administrator shall also return, under oath, with such appraisement, so far as may come to his knowledge, all real estate lying without the County in which administration may be had.] (a)

How made
and return-
ed.

§ 2479. The warrant of appraisement must be executed, except providentially prevented, within sixty days after the same is issued, and the inventory and appraisement should be returned to the Ordinary within four months after the qualification of the administrator. If the execution or return be delayed beyond the pe-

When to
be executed.

(a) Acts of 1863-4, p. 47, and Acts 1865-6, p. 31.

Section 3.—Inventories, Appraisement, and Returns.

riods specified, the Ordinary should inquire into the reason and spread the same on his record with the return.

What to contain. § 2480. A debt due by the administrator to the estate, must be included in the inventory, and notice taken of any interest the estate may have in an unsettled partnership, though the assets be in the hands of a surviving partner.

Joint inventory. § 2481. The inventory should be made jointly by all the administrators, but is not conclusive proof of joint possession of the assets.

Oath of appraisers. § 2482. The appraisers, before entering upon their duties, shall take and subscribe an oath, before an officer authorized to administer it, or before one of their number, who is hereby authorized to administer the same, faithfully to discharge their duty as appraisers.

Return of appraisers. § 2483. The return of the appraisers shall be in writing, and certified by their own signatures, any three being competent to act. It shall be delivered to the administrator, and by him returned to the Ordinary.

Neglect of administrators in this behalf. § 2484. The neglect of an administrator to return a correct inventory and appraisement shall be held as sufficient ground for removal.

Can not take property at valuation. § 2485. No trustee is allowed to convert the trust property to his own use, accounting for it at the appraised value. But in such cases he must account for its true value.

Annual returns. § 2486. On or before the regular term of the Court in July in each and every year, every administrator shall make a true and just account, upon oath, of his receipts and expenditures in behalf of the estate during the preceding year, together with a note or memorandum of any other fact necessary to the exhibit of the true condition of such estate. To this account shall be attached copies of all the vouchers, showing the correctness of each item; [or, at the option of the executor or administrator, the originals may be filed with the return, and shall remain in the Ordinary's office for thirty days.] (a) If any of the receipts be for cotton, corn, or other produce sold, the voucher shall show the quantity of each, the price at which it was sold, the name of the purchaser, and the time of the sale.

Vouchers. § 2487. The annual return of an administrator shall be accompanied by the original vouchers, and it shall be the duty of the

(a) Acts of 1862-3, pp. 138-9.

Section 3.—Inventories, Appraisement, and Returns.

Ordinary to compare the originals with the copies, before returning the originals to the administrator.

§ 2488. The Ordinary shall carefully examine each return and its vouchers, and if found correct, and no objection be filed in thirty days from the time it is filed in office, shall allow the same, and order it to be recorded, together with the original or copy vouchers attached. The return and copy vouchers shall be kept of file in the Ordinary's office. [If the original vouchers are filed without copies, they shall, when recorded, be returned to said executor or administrator on demand.] (a) The return thus allowed and recorded shall be *prima facie* evidence in favor of the administrator of its correctness.

Duty of Ordinary.

§ 2489. The return of a non-resident administrator may be admitted to record upon the affidavit of his surety. And if the administrator be dead, the representative of his estate may make a return of the accounts of the deceased administrator in the same manner, and to have the same effect as if he were living.

Non-resident or dead administrator.

§ 2490. To insure annual returns from every administrator, it shall be the duty of the Ordinary to keep a docket of all such as are liable to make returns, and immediately after the session of the July term in each year to cite all defaulters to show cause for their neglect. A willful and continued failure shall be good cause of removal from the trust.

Ordinary's docket.

SECTION IV.

OF MANAGING THE ESTATE AND PAYING THE DEBTS.

SECTION.

- 2491. Payments of debts.
- 2492. Debts paid by heirs.
- 2493. When the debts are to be paid.
- 2494. Priority of debts.
- 2495. How paid.
- 2496. Collection by administrator.
- 2497. Or by distributee or creditor.
- 2498. Power of administrator, etc.
- 2499. May accept assignment.

SECTION.

- 2500. May compromise claims.
- 2501. Debts barred, etc.
- 2502. Counsel fees.
- 2503. Investment in stocks.
- 2504. Continuing business of deceased.
- 2505. May contract for labor.
- 2506. Duty as to contracts.
- 2507. Twelve months' exemption, etc.

§ 2491. Every administrator shall give six weeks' notice by advertisement in one of the public gazettes of this State, or at three different places of the most public resort in the County, for creditors of the estate to render in an account of their demands. The

Payment of debts.

(a) Acts of 1862-3, pp. 138-9.

Section 4.—Managing the Estate and Paying the Debts.

administrator shall be allowed twelve months from the date of his qualification to ascertain the condition of the estate. Creditors failing to give notice within that time lose all right to an equal participation with creditors of equal dignity to whom distribution is made before notice of such claims is brought to the administrator; nor can they hold the administrator liable for a misappropriation of the fund; if, however, there are assets in the hands of the administrator sufficient to pay such debts, and no claims of higher dignity are unpaid, the assets shall be thus appropriated, notwithstanding the failure to give notice.

§ 2492. If the estate has been distributed to the heirs at law without notice of an existing debt, the creditor may compel them to contribute *pro rata* to the payment of his debt.

Debts paid
by heirs.

§ 2493. The administrator should pay the debts of the estate, wholly or in part, at the expiration of the first year from his appointment. If partial payment is made it should be *pro rata* on debts of equal dignity. Successive dividends to creditors should be made at the end of every year, until the estate is paid out. If the administrator is himself a creditor he can not retain his own debt, but must share with others of equal dignity.

When the
debts are to
be paid.

§ 2494. In the payment of the debts of a decedent, they shall rank in priority in the following order :

Priority
of debts.

1. Funeral expenses to correspond with the circumstances of the deceased in life, including the physician's bill and expenses of the last sickness. If the estate is solvent, the administrator is authorized to provide a suitable protection for the grave of the deceased.

2. The necessary expenses of administration, including a provision for the support of the family.

3. Unpaid taxes or other debts due the State or the United States.

4. Debts due by the deceased as executor, administrator, or guardian for the estate committed to him as such, or any debt due by the deceased as trustee, having had actual possession, control and management of the trust property.

5. Judgments, mortgages, and other liens created during the lifetime of deceased, and to be paid according to their priority of lien. Mortgages and other liens on specific property to be preferred only so far as such property extends.

6. Debts due for rent.

8-128
8-479
11-300
27-200
23-12

Section 4.—Managing the Estate and Paying the Debts.

7. All liquidated demands, including foreign judgments, dormant judgments, bonds, and all other obligations in writing for the payment of money, promissory notes, and all debts the amount due on which was fixed and ascertained or acknowledged prior to the death of the decedent.

8. Open accounts.

§ 2495. All the estate, real and personal, unless otherwise provided by this Code, is liable for the payment of debts. If there is a will, the property charged with the debts should be first applied; next the residuum, or if there be no residuary clause, the undivided estate; next, general legacies may abate *pro rata*; and lastly, specific legacies must contribute. How paid.

§ 2496. An administrator is bound to place in suit every debt due the estate which he may reasonably expect to recover; and if by his neglect, or indulgence, the debt is barred by the lapse of time, or is otherwise lost to the estate, he is responsible therefor. Collection by administrator.

§ 2497. If the administrator for any cause declines to place any claim in suit, he may, nevertheless, assign the same to a distributee or creditor, who may, at his own expense, prosecute the same—the proceeds, if recovered, after paying expenses, to be distributed by the administrator. Or by distributee or creditor.

§ 2498. [Administrators, executors, and guardians, are authorized to compromise all contested or doubtful claims, for or against the estates or wards that they represent, to submit such matters to arbitration, to release a debtor if to the interest of the estate or ward, and to appoint an attorney in fact, being responsible for the acts of said attorney.] (a) Powers of administrator.

§ 2499. [Administrators, guardians, and others holding trust estates, are also authorized to compromise claims in favor of the estates they represent, or their wards, where their debtors deliver, *bona fide*, all their property for the use of creditors, except such as is or may be exempt from levy and sale in cases of insolvent debtors; *provided* the Ordinary, after an examination of the facts, shall first make an order directing such compromise.] (a) May join in assignment.

§ 2500. [Guardians, administrators, executors, and all other persons acting in a fiduciary capacity, are authorized to compromise all doubtful debts belonging to such estates, where such settlement will advance the interests of those represented. All May compromise.

Section 4.—Managing the Estate and Paying the Debts.

persons acting under the provisions of this Section, on making their returns, shall make oath that the settlements thus made were in good faith, and to the best interests of the parties thus represented: *provided* the Ordinary first make an order directing such compromise.] (a)

Debts barred by statute of limitation. § 2501. An administrator in his discretion may relieve a debt from the bar interposed by the lapse of time, by a new promise to pay; *provided* such bar had not occurred in the lifetime of his intestate. In such cases the distributees can make him responsible, by proof that the claim against the estate was in reality unjust.

Counsel fees. § 2502. An administrator is authorized to provide for the estate competent legal counsel, according to the exigencies of the estate he represents.

Investment in stocks. § 2503. When from any cause an administrator is compelled to hold the funds of the estate in his hands, he is authorized to invest the same in stocks, bonds, or other securities issued by this State, or (by leave of the Ordinary) in bonds issued by the proper authorities of the cities of Savannah and Augusta. In such case he shall, within twelve months thereafter, make a legal return thereof, in which shall be set forth the price paid, the time of the purchase, and the name of the seller. Such investments shall not be subject to taxation so long as they are held for the estate. If an executor or trustee has in his hands money as the separate estate of a married woman, absolutely or for life, he may, under the direction of the Superior Court, invest such funds in land.*

Continuing business of deceased. § 2504. An administrator may exercise his discretion in continuing the business of his intestate until the expiration of the current year. Up to the time of sale or distribution, the administrator must manage and dispose of the property of the estate for the best interest of the estate.

May contract for labor. § 2505. [The administrator may make contracts for labor or service with persons of color, or with white persons, for the benefit of the estate he represents, upon such terms as he may deem best, and all such contracts made in good faith, shall be a charge upon, and bind the estate whenever the same are approved by the Ordinary of the County.] (b)

§ 2506. The administrator, as far as possible, must fulfill the

(a) Acts of 1866, p. 67. (b) Acts of 1865-6, p. 87.

* As to investments by administrators, etc., see Acts of 1861, p. 32; Acts of 1863-4, p. 29; Acts of 1865-6, p. 85. Are the first two still of force? Query.

Section 5.—Receiving and Making Titles on Bonds for Titles.

executory and comply with the executed contracts of the deceased, and he has a corresponding right to demand the same of the parties contracted with. If, however, the personal skill of the intestate entered into the consideration of the contract, his death renders the execution impossible, and the contract, though entire, must be considered as divisible and closed at his death, and the part execution by the deceased authorizes and requires a corresponding compliance by the other contractor.

Duty as to contracts.

§ 2507. No suit to recover a debt due by the decedent shall be commenced against the administrator until the expiration of twelve months from his qualification. This exemption shall not apply to an administrator *de bonis non*, unless appointed within the year allowed to his predecessor. And in all cases the administrator *de bonis non* shall be made a party to suits pending against the administrator upon *seire facias* issued to the first term.

Twelve months' exemption from suit.

SECTION V.

OF RECEIVING AND MAKING TITLES ON BONDS FOR TITLES.

SECTION.

2508. Making titles on bond of intestate.

2509. Notice.

2510. Vendee dying, title to heirs.

SECTION.

2511. Vendor and vendee dying.

2512. Costs.

§ 2508. If the intestate, during his life, executed a bond to make titles to land, and dies without making such titles, the holder of such bond, after having complied with its condition, may apply to the Ordinary having jurisdiction over the estate, for an order requiring the administrator to execute the titles according to the terms of the bond, in all cases annexing to his petition a copy of the bond.

Making titles on bond of intestate.

§ 2509. [Fifteen days' notice in writing, to the administrator, or executor, and heirs at law of the deceased, if to be found in this State; and if not residents, by publication in one of the gazettes of this State for thirty days, shall be given of such application. If no objection is filed, and the Ordinary is satisfied of the truth of the allegations in the petition, the order shall be granted. When objections in writing are filed in the office of said Ordinary, it shall be the duty of the Ordinary to hear evidence as to the fact whether the conditions of said bond have been complied with

Notice.

Trial.

Section 5.—Receiving and Making Titles on Bonds for Titles.

by the payment of the purchase money or not, and to grant an order requiring said titles to be made, or not, as he may think the principles of justice may require; and either party, being dissatisfied with the decision, may appeal to the Superior Court upon the same terms as appeals are granted in other cases.] (a)

Vendee dying, title to heirs. § 2510. If the vendee dies, having possession of a bond for titles [or having paid the purchase money for land,] (b) the Ordinary of the County, having jurisdiction of the estate, may, upon a similar application by any one of the heirs at law of the vendee, and on notice to the vendor, as provided in the foregoing Section, order the title to be made to the heirs at law of the deceased. Such titles, however, shall not prevent such lands being assets in the hands of the administrator for the payment of debts.

Vendor and vendee dying. § 2511. If both the vendor and vendee die, the notice shall be given to the legal representative of the vendor, who shall make the title to the heirs of the vendee.

Costs—by whom paid. § 2512. [Whenever the party making the bond shall have died before the time at which the titles were to be made, and before the purchase money became due, the costs of the proceedings shall be paid by the representative of his estate; but if the time for making such titles and the payment of the money elapsed before the death of the obligor, the costs shall be paid by the applicant.] (a)

SECTION VI.

OF ADMINISTRATOR'S SALE.

SECTION.

- 2513. Sale of perishable property.
- 2514. Sales at public outcry.
- 2515. Terms of sale.
- 2516. Sale of wild lands.
- 2517. And of insolvent papers.
- 2518. Sale of land.
- 2519. Manner of sale.
- 2520. Recital in deed.

SECTION.

- 2521. Land lying in two Counties.
- 2522. Effect of warranty.
- 2523. Property held adversely.
- 2524. Claim—where and how tried.
- 2525. Private sales, against public policy.
- 2526. Sales by executor, etc.
- 2527. Terms must be stated.
- 2528. Return of sales.

Sale of perishable property. § 2513. The personal perishable property should be sold at as early a day as practicable, consistent with the interest of the estate. It must be done under order from the Ordinary, in which the kind of notice and the length of time it shall be given, being

Section 6.—Administrator's Sale.

not less than ten days, shall be specified. The order for sale shall be granted as of course, unless the application is from a temporary administrator, when the Ordinary may, in the exercise of his discretion, [grant such order, when it is made to appear to be to the interest and advantage of the estate.] (a)

§ 2514. All sales by administrators (except of annual crops sent off to market, and of vacant lands,) shall be at public outcry, between the hours of ten o'clock A. M. and four o'clock P. M.; nor shall any sale be continued from day to day unless so advertised. Good faith is required of the administrator in all cases that the property be sold in such manner and quantities as shall be deemed most advantageous to the estate. Sales at public outcry. To best advantage.

§ 2515. The administrator may exercise his discretion in demanding cash or extending credit. Full notice should be given, and the best interest of the estate observed. If credit is given, the administrator must, at his own risk, determine the sufficiency of the security given. If the security taken is ample at the time, and subsequently the debt is lost, after the utmost diligence by the administrator, he will not be responsible for the amount. Terms of sale. Diligence as to surety.

§ 2516. On application by the administrator and due notice advertised as hereinafter provided in case of lands, the Ordinary may grant an order authorizing the administrator to sell, at private sale, wild uncultivated lands lying in Counties other than that of the administration; *provided*, no objection is filed by any one interested in the estate, and the Ordinary is satisfied that such sale is preferable. Sale of wild lands.

§ 2517. All notes, bonds, judgments, accounts, or other evidences of debt, which, after due diligence, remain uncollected, and are deemed insolvent or doubtful, may be sold by the administrator, under an order of the Ordinary, at public outcry, during the usual hours of sale, on the regular day of Sheriff's sales, and at the Court House door; thirty days' notice of such sale being given at the Court House door, and at three or more public places in the County. And of insolvent papers.

§ 2518. If at any time it becomes necessary for the payment of the debts of the estate, or for the purposes of distribution, to sell the land of the decedent, the administrator shall, by written petition, apply to the Ordinary for leave to sell, setting forth in the Sale of land.

Section 6.—Administrator's Sale.

Notice. petition the reason for such application ; and notice of the same shall be published once every two weeks for two months before the hearing, in the gazette in which the County advertisements are published. If no objection is filed, and the Ordinary is satisfied of the truth of the allegations in the petition, an order shall be passed granting the leave to sell, specifying therein the land as definitely as possible.

Manner of sale. § 2519. Every such sale shall be advertised [in any newspaper or gazette, having a general circulation in the County where the property to be sold is located,] (a) for forty days after the leave granted and before the sale. It shall be had at public auction on the first Tuesday of the month, between the usual hours of sale, and at the place of public sales in the County having jurisdiction of the administration, unless by special order in the discretion of the Ordinary, a portion of the land is sold in another County where the land lies.

Recital in deed. § 2520. The recital of a compliance with these provisions in the administrator's deed shall be *prima facie* evidence of the facts.

Land lying in two Counties. § 2521. If land ordered to be sold is composed of one tract or body of land lying partially in two Counties, the sale may be had in either County, as directed by the Ordinary.

Effect of warranty. § 2522. An administrator can not bind the estate by any warranty in any conveyance or contract made by him, nor is he personally bound by such covenant, unless the intention of personal liability is distinctly expressed.

Property held adversely. § 2523. An administrator can not sell property held adversely to the estate by a third person ; he must first recover possession.

Claim—where and how tried. § 2524. If an administrator offers or proposes to sell any real estate which is claimed by any other person, such third person may interpose his claim, which shall be tried in the County where the land lies. If the claim be to personal property, it shall be tried in the County of the residence of the administrator.

Private sale against policy. § 2525. A private sale of land under an obligation to perfect by legal formality, is contrary to public policy, and renders such sales always open to review at the option of parties at interest. Such sales made prior to December 17th, 1859, are legal and valid.

§ 2526. If a will authorizes a private sale by the executor, an

(a) Acts of 1863-4, p. 30.

Section 7.—Distribution, Advancements, and Provision for Family.

administrator with the will annexed, may execute the power and sell the property without order from the Ordinary. If the will merely designates the property to be sold without specifying the mode of sale, no application for leave to sell is necessary; but in other respects the executor or administrator with the will annexed must comply with the requisitions before specified.

Sales by executors, etc.

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§ 2527. [Executors and administrators shall state in all advertisements of sales by them, the terms of sale.] (a)

Terms must be stated.

§ 2528. An administrator must make a full return of every sale, specifying the property sold, the purchasers, and the amounts, together with the terms of sale.

Return of sales.

SECTION VII.

OF DISTRIBUTION, ADVANCEMENTS, AND PROVISION FOR FAMILY.

SECTION.

- 2529. Rule of distribution.
- 2530. Year's support to family.
- 2531. Support of widow and children.
- 2532. Schedule.
- 2533. Title to property set apart.
- 2534. Provision in lieu of year's support.
- 2535. Two sets of children.
- 2536. Fees and costs.
- 2537. Widows may pay debts.
- 2538. Advancements.

SECTION.

- 2539. Proof of.
- 2540. Portions in trust, etc.
- 2541. Advancements, etc.
- 2542. How estimated.
- 2543. Division in kind.
- 2544. Order for partition.
- 2545. Return.
- 2546. Refunding bond.
- 2547. Lands divided—how.

§ 2529. After the payment of expenses of administration and the debts of the deceased, the balance of the estate, both real and personal, stands subject to distribution among the heirs at law of the deceased according to the relationship hereinbefore prescribed.

Rules of distribution.

§ 2530. Among the necessary expenses of administration, and to be preferred before all other debts, is the provision for the support of the family, to be ascertained as follows: Upon the death of any person, testate or intestate, leaving an estate solvent or insolvent, and leaving a widow, or a widow and minor child or children, or minor child or children only, it shall be the duty of the Ordinary, on the application of the widow, or the guardian of the child, or children, or any other person in their behalf, on no-

Year's support to family.

*164a
342-418*

(a) Acts 1866, p. 65.

See 2494 Section

Section 7.—Distribution, Advancements, and Provision for Family.

7-194
8-123
2037

tice to the representative of the estate, if there is one, and if none, without notice, to appoint five discreet appraisers; and it shall be the duty of such appraisers, or a majority of them, to set apart and assign to such widow and children, or children only, either in property or money, a sufficiency from the estate for their support and maintenance for the space of twelve months [from the date of administration, in case there be administration on the estate,] (a) to be estimated according to the circumstances and standing of the family previous to the death of the testator or intestate, and keeping in view also the solvency of the estate. If there be a widow, the appraisers shall also set apart, for the use of herself and children, a sufficient amount of the household furniture. The provision set apart for the family shall, in no event, be less than the sum of one hundred dollars, [and if it shall appear upon a just appraisal of the estate that it does not exceed in value the sum of five hundred dollars, it shall be the duty of the appraisers to set apart the whole of said estate for the support and maintenance of such widow and child, or children, or if no surviving widow, to the lawful guardian of the child or children for their benefit.] (b)

Support of widow and children. 2531. [Where an estate is to be kept together for a longer time than twelve months, and there are no debts to pay, and a widow and minor children to be supported out of said estate, they shall have a year's support for each year that such estate may be kept together, and the appraisers aforesaid may act in the same capacity for the second and any subsequent year, or new appraisers may be appointed by the Ordinary to assign such support after the first year.] (c)

Schedule. § 2532. It shall be the duty of the appraisers to make a schedule of the property set apart by them, and return the same under their hands and seals to the Ordinary, within three months from the date of their action—to which return objections may be filed by any person interested, at any time within six months after the filing of the same in office, and if no objections are made, or if made are disallowed, the Ordinary shall record the return so made in a book to be kept for this purpose; if an appeal be taken, pending the appeal, the family shall be furnished with necessities by the representative of the estate.

Objections.

(a) Acts 1866, p. 66. (b) Acts of 1862-3, pp. 30, 31. (c) Acts of 1865-6, p. 31.

Section 7.—Distribution, Advancements, and Provision for Family.

§ 2533. The property so set apart by the appraisers shall vest in the widow and child, or children; and if no widow, in such children, share and share alike: [and the same shall not be administered as the estate of the deceased husband or father.] (a) Title to property set apart.

§ 2534. A testator, may by his will, make provision in lieu of this support for twelve months; in which case the widow may elect, under the same rules as regulated her election of dower. Provision in lieu of year's support.

§ 2535. If there are two sets of minor children, by different wives, the appraisers shall specify the portion going to the children of the deceased wife, which portion shall vest in them. Two sets of children.

§ 2536. The reasonable charges of the appraisers, to be assessed by the Ordinary, and the fees of the Ordinary, shall be paid by the applicant out of the fund set apart. The Ordinary may issue a writ of *fieri facias* against the representative of the estate for the amount so awarded as aforesaid. Fees and costs.
Fi. fa. vs. administrator, etc.

§ 2537. [When the whole of an estate is set apart as provided in Section 2530, the widow may pay so much and such parts of the debts of her deceased husband as she may think proper, consistently with her means, with the advice and consent of the Ordinary.] (a) Widow may pay debts.

§ 2538. An advancement is any provision by a parent made to and accepted by a child out of his estate, either in money or property, during his lifetime, over and above the obligation of the parent for maintenance and education. Donations from affection, and not made with a view of settlement, nor intended as advancements, shall not be accounted for as such; nor shall the support of a child under the parental roof, although past majority, nor the expenses of education, be held as advancements, unless charged as such by the parent. Advancements.

§ 2539. A memorandum of advancements, in the handwriting of the parent, or subscribed by him, shall be evidence of the fact of advancement, but shall not be conclusive as to the valuation of the property, unless inserted as a part of testator's will or referred to therein. Proof of.

§ 2540. A portion given in trust for the benefit of a child is an advancement to such beneficiary, as if directly given to her. A portion given to the children of a deceased child is an advancement to that distributive share of the estate, and the grand- Portions in trust and to grandchildren.

Section 7.—Distribution, Advancements, and Provision for Family.

children must regulate and equalize inequalities among themselves in dividing the surplus coming to them.

§ 2541. In the distribution of an estate, every child of the intestate, and if a child be dead, the representative of that distributive share, must first account for any and all advancements made in intestate's lifetime. If the advancements amount to or exceed the share received by an unadvanced child, such advanced distributee shall receive nothing farther from the estate; if the advancement is less, then each unadvanced or less advanced distributee shall first be made equal to such advancement before a general and equal distribution is made. If there be a widow, she shall be made equal to advanced children, as other distributees.

§ 2542. Every advancement, unless a value is agreed on at the time of its acceptance, shall be estimated at its value at the time of the advancement, and no interest shall be charged upon the value thereof until the time of the first distribution of the estate; from which date, advancements shall be reckoned with regard to interest, in the same manner as an equal amount of the estate received at that time.

§ 2543. Whenever it is practicable the Ordinary may order a distribution of the estate in kind—which order may be granted on the application of the representative or any distributee of the estate. In all cases the applicant shall give at least twenty days' written notice to all parties in interest within this State who are of age, and to the guardians, if any, of minor distributees, and shall also give notice to any persons in interest residing out of the State, by publication of the same at least twice a month for four months in one of the gazettes of this State.

§ 2544. Upon hearing the petition of the applicant, the Ordinary, if no good cause to the contrary be shown, shall grant an order for division, and appoint three or more freeholders of the County where the property is situated, whose duty it shall be to appraise and impartially divide the property into the requisite number of shares, and by lot, or otherwise, to assign to each distributee his share, equalizing the same, if necessary, by balances in money, to be paid either out of the estate, or by the respective distributees; such appraisers and partitioners being first sworn to the faithful and impartial discharge of their duty as such. If only a portion of the distributees, or legatees, are entitled at the time

Section 7.—Distribution, Advancements, and Provision for Family.

to the possession of their portion of the property, their shares may be set apart as aforesaid, and the remainder be left in common stock for future distribution.

§ 2545. The return of the division and partition thus made shall be in writing, signed by the appraisers; and any party in interest may file objections to such return before it is made the judgment of the Court of Ordinary. If such objections be sustained, the Ordinary shall order a new division by the same or other partitions. Return.

§ 2546. In all cases of distribution in kind, the administrator, before delivering up the property, may demand of each distributee, or his guardian, bond and security to refund his proportionable part of any debt which may be afterward established against the estate, and the costs attending the recovery thereof. Refunding
bond.

§ 2547. [Upon the application of the legal representative of any deceased person, whose estate consists, wholly, or in part, of lands lying in several Counties of this State, to the Ordinary of the County where said representative makes his return, showing that said estate is in readiness for distribution, and that the same can not be made without prejudice or loss to the minor distributees thereof, except by the division of the lands of said estate in kind, it shall and may be lawful for the Ordinary of said County, in his discretion, to pass such order as to him shall seem most adequate to secure a just and equal division in kind of the lands of said estate among all parties in interest; *provided*, that said representative shall give the notice of his application aforesaid as is required by law in the case of a division of estates in kind.] (a) Ordinary
may direct
division of
lands.

Proviso.

SECTION VIII.

OF COMMISSIONS AND EXTRA COMPENSATION.

SECTION.

- 2548. Ordinary commissions.
- 2549. On interest made.
- 2550. No commissions on payments, etc.
- 2551. None for delivering property, etc.
- 2552. Traveling and other expenses.

SECTION.

- 2553. Extra compensation.
- 2554. No fund shall pay commissions, etc.
- 2555. Forfeiture of commissions.
- 2556. Expense of agents.

§ 2548. As a compensation for his services, the administrator shall have a commission of two and one-half per cent. on all sums Ordinary
commissions

(a) Acts of 1865-6, p. 85.

Section 8.—Commissions and Extra Compensation.

of money received by him on account of the estate (except money loaned by him and repaid to him), and a like commission on all sums paid out by him, either to debts, legacies, or distributees. Such commissions are part of the expense of administration, and should be paid from the general estate, if any. If none, then to be deducted from the debt or legacy paid.

§ 2549. If, in the course of administration, the administrator shall receive interest on money loaned by the intestate, or by himself as administrator, and shall return the same to the Ordinary so as to become chargeable therewith as a part of the corpus of the estate, he shall be entitled to ten per cent. additional commission on all such amounts of interest made.

§ 2550. The administrator is entitled to no commissions on debts, legacies, or distributive shares paid to himself, and if there are more administrators than one, the division of the commissions allowed them, among themselves, shall be according to the services rendered by each.

§ 2551. No commissions shall be paid to any administrator or executor for delivering over of any property in kind; but the Ordinary may allow reasonable compensation for such service, not exceeding three per cent. on the appraised value. If, however, land is worked by any trustee for the benefit of the parties in interest, the Ordinary may, in his discretion, allow to such trustee additional compensation for such services; in no case exceeding ten per cent. of the annual income of the property so managed.

§ 2552. An administrator in the discharge of his duty required to travel out of his County, shall be allowed the amounts of his actual disbursements, to be ascertained by his own statements under oath. The Ordinary may also allow him a reasonable compensation for the time devoted to this service; *provided*, under the circumstances, the Ordinary adjudges such additional compensation a proper charge against the estate.

§ 2553. In other cases of extraordinary services, extra compensation may be allowed by the Ordinary. But in no case is the allowance of extra compensation by the Ordinary conclusive upon the parties in interest.

§ 2554. Where, from any cause, a trust fund shall pass through the hands of several administrators, or other trustees, by reason of the death, removal, resignation, or otherwise, of the first qualified trustee, such fund shall not be subject to diminution by

Section 9.—Final Settlements and Receipts

charges of commissions by each successive trustee holding and receiving in the same right; but commissions for receiving the fund shall be paid to the first trustee or his representative, and commissions for paying out shall be paid to the trustee actually disbursing the fund, and no commission shall be paid for handing over the fund to the successor of a trustee.

§ 2555. Administrators and trustees failing to make annual returns as hereinbefore required, shall forfeit all commissions for transactions during the year within which no return is made, unless the Ordinary, upon cause shown, shall, by special order on the minutes, relieve them from this forfeiture. Forfeiture of commissions

§ 2556. Among the expenses of administration should be included and allowed the expenses of such agent as the administrator finds it necessary to employ for the estate. The existence of the necessity must be satisfactorily shown to the Ordinary. Expense of agents.

SECTION IX.

OF FINAL SETTLEMENTS AND RECEIPTS.

SECTION.

- 2557. Settlement before the Ordinary.
- 2558. How made.
- 2559. Settlement in Court of Equity.
- 2560. Rule for charging interest.

SECTION.

- 2561. Rule for settlements.
- 2562. Interest—how compounded, etc.
- 2563. Final receipts may be recorded.
- 2564. Refunding bonds—when to be given

§ 2557. Any person interested as distributee or legatee may, after the expiration of one year from the grant of administration, cite the administrator to appear before the Ordinary for a settlement of his accounts; or, if the administrator chooses, he may cite all of the distributees to be present at the settlement of his accounts by the Ordinary. Such settlement shall be conclusive upon the administrator, and upon all the distributees who are present at the hearing. Settlement before the Ordinary.

§ 2558. Upon proof of such citation by a distributee, the Ordinary may proceed to make an account, hear evidence upon any contested question, and settle finally between the distributee and administrator. Such settlement may be enforced by execution or attachment, for contempt—either party having the liberty of appeal. How made and enforced. Appeal.

§ 2559. A Court of Equity shall have concurrent jurisdiction over the settlement of accounts of administrators. Settlement in Court of Equity.

Section 9.—Final Settlements and Receipts.

§ 2560. In making such settlements, a reasonable time, according to the facts of each case, should be allowed to the trustee to invest funds coming into his hands, before charging him with interest thereon; and, in like manner, disbursements made by the trustee should, as a general rule, bear interest from some period anterior to the date of payment, according as he may have retained funds to meet them. In every case, the object is to charge the trustee with such interest as a diligent man would make, and to see that the trust fund is not used for his private benefit.

§ 2561. [All statements for final settlement with executors, administrators, guardians, and trustees, shall hereafter be made out upon the following basis :

1. The rate of interest charged against executors, administrators, guardians, and trustees, shall be the same as that now regulated by law.

2. No interest shall be charged either way for the first year, as one year is now allowed by law for the collection of assets and to ascertain the indebtedness of an estate.

3. Any executor, administrator, guardian, or trustee, in the management of an estate, may retain in his hands, at the beginning of each year, an amount of money sufficient to pay the current expenses of said year; upon which amount no interest shall be charged in final settlement.

4. The executor, administrator, guardian, or trustee, shall, however, pay interest upon all balances left in hand at the beginning of each year over and above the payment of expenses for said year, the same to be ascertained and computed in final settlement.

5. When it shall so happen that, at the beginning of any year, an executor, administrator, guardian, or trustee, shall not have an amount in hand sufficient to pay the current expenses of said year, and his annual returns show that fact, he shall be allowed to charge, in final settlement, interest on the amount thus advanced by him during the year.

6. The annual returns of executors, administrators, guardians, and trustees, shall be made out in the manner now regulated by law and practiced in this State; and the reservations, charges, and computations of interest, set forth in this Section, shall be made when said parties come to make a statement for final settlement.

Section 9.—Final Settlements and Receipts.

7. The expenditures and receipts of each year are to be ascertained by reference to annual returns, and in all cases the commissions annually, shall be considered as a part of the annual expenses.] (a) Expenditures—how ascertained.

§ 2562. The interest to be charged against trustees appointed since the first of January, 1848, and hereafter appointed, shall be at the rate of seven per cent. per annum, without compounding, for six years from the date of their qualification; and after that time, at the rate of six per cent. per annum, annually compounded. But any trustee may relieve himself from this rule by returning annually the interest actually made and accounting for the balance of the fund. Any distributee may recover greater interest by showing that the trustee actually received more, or that he used the funds himself to greater profit. Interest—how and when compounded.

§ 2563. The final receipts on settlements given by distributees or legatees to an administrator, if attested by a Judge of any Court in this State, a Justice of the Peace, or a Notary Public, may be admitted to record by the Clerk of the Superior Court of the County of the residence of the administrator, and, when recorded, shall be admitted in evidence without further proof; and in case of the loss of the original, a copy may be used in evidence under the same rules as copies of registered deeds. Final receipt may be recorded.

§ 2564. An administrator, where litigation against the estate is pending or is threatened, or notice of a claim has been given to him, may demand of the distributees or legatees refunding bonds to indemnify him against such claims; and on failure to give such bonds, the administrator may reserve enough of the assets to respond to such claims. But in no case shall the administrator require a refunding bond from the heir when no threatened suit or claim renders such bond necessary. Refunding bonds—when to be given.

SECTION X.

OF LETTERS OF DISMISSION AND RESIGNATION.

SECTION.

- 2565. Dismission—how granted.
- 2566. Duty of Ordinary.
- 2567. Fraudulent discharge.

SECTION.

- 2568. Disposition of unclaimed funds.
- 2569. Registration—how made.

(a) Acts of 1865-6, pp 84-5.

Section 10.—Letters of Dismission and Resignation.

Dismission
—how grant-
ed. § 2565. An administrator who has fully discharged all his duties may petition the Ordinary to pass an order discharging him from his trust; upon such petition a citation shall issue, requiring all persons concerned, to show cause against the granting of the discharge. Such citation shall be published in the gazette for six months.

Duty of
Ordinary. § 2566. Upon the hearing, the Ordinary shall examine closely into the condition of the estate, and the conduct of the administrator, and if he shall be satisfied that he has faithfully and honestly discharged the trust and confidence reposed in him, the prayer of the petitioner shall be granted, and the administrator released from all liability as such; *provided*, any heir, distributee, or legatee, who is a minor at the time of the discharge, may, within five years after his arrival at majority, commence suit against the administrator, and such discharge shall be no bar to his action.

Exception
in favor of
minors. § 2567. A discharge obtained by the administrator by means of any fraud practiced on the heirs or the Ordinary, is void, and may be set aside, on motion and proof of the fraud. No discharge should be granted without actual examination by the Ordinary, and the order of discharge should assert such examination into the accounts of the administrator.

Fraudulent
discharge. Examination by Or-
dinary. § 2568. If funds are in the hands of the administrator, and no person claiming the same, the Ordinary may nevertheless grant a discharge, at the same time passing an order either requiring the administrator to deposit the fund in such solvent bank as the Court may direct, or else authorizing him to retain the same in his hands at an interest not exceeding four per cent. per annum. The discharge shall not take effect until the money is deposited; or in the event of its being retained by the administrator, it shall not relieve him or his sureties from their liability to comply with such order and respond for such fund.

Disposition
of unclaimed
funds. Resignation
—how made. § 2569. Any administrator who, from age or infirmity, removal from the County, or for any other cause, desires to resign his trust, may petition the Ordinary, stating the reasons, and the name of a suitable person qualified and entitled to and willing to accept the trust; whereupon the Ordinary shall cite such person, and the next of kin of the intestate, to appear and show cause why the order should not be granted. If no good cause be shown, and the Ordinary is satisfied that the interest of the estate will not suffer, the resignation shall be allowed, and the administrator shall be

Section 11.—Removing Proceedings to another County.

discharged from his trust whenever he has fairly settled his accounts with his successor and filed with the Ordinary the receipt in full of such successor. Minors in interest shall be allowed five years from the time of their arrival at majority to examine into and open such settlement. Exception in favor of minors.

SECTION XI.

OF REMOVING PROCEEDINGS TO ANOTHER COUNTY.

SECTION.

2570. Proceedings to obtain order.

2571. Executor need not give bond.

SECTION.

2572. Sureties—how liable.

§ 2570. Whenever from any change of residence, or other cause, an administrator may desire to remove the jurisdiction of his trust from the Court of Ordinary of the County of the residence of testator or intestate to that of his own residence, the same may be done by complying with the following requisitions: Proceedings to obtain order.

1. By obtaining a copy of all the records of the Ordinary relative to his trust, and causing the same to be recorded by the Ordinary of the County of his residence.

2. By giving to the Ordinary of his County new bond, with good security, for the discharge of his duty as administrator, in the same manner as if the administration was originally granted there.

3. By filing with the Ordinary of the County having original jurisdiction, a certificate under the seal of the Ordinary of the County to which the trust is to be removed, that the foregoing provisions have been complied with.

4. The Ordinary having jurisdiction shall then pass an order transferring the trust to the Ordinary of the other County.

§ 2571. An executor who has not been required to give bond shall not be required to give bond on removal of his trust to another County. Executor need not give bond.

§ 2572. On removal of an administration as herein provided, the sureties on the first bond are liable only for the conduct of the administrator up to the time of removal; the sureties on the second bond are liable for all his acts from the commencement of the administration. If the latter are made responsible for acts prior to the removal, they have a right of contribution against the former. Sureties—how liable.

Section 12.—Foreign Administrators.

SECTION XII.

OF FOREIGN ADMINISTRATORS.

SECTION.

2573. Privileges in this State.

2574. Exemplification.

SECTION.

2575. Protection of heir, etc.

2576. Transfer of stock, etc.

Privileges
in this State.

§ 2573. When a person at the time of his death is domiciled in another State, and administration is there regularly granted on his estate, either to an executor or administrator, such executor or administrator, if there be none appointed in this State, may institute his suit in any Court in this State to enforce any right of action, or recover any property belonging to the deceased, or accruing to his representative as such.

Exemplifi-
cation.

§ 2574. Pending the action, a properly authenticated exemplification of the letters testamentary or of administration, shall be filed with the Clerk of the Court, to become a part of the record; *provided* the cause is pending in a Court of Record. If it be a summary process, the exemplification shall be filed with the papers.

Protection
of heir, etc.

§ 2575. If any citizen of this State is interested as creditor, heir, or legatee in the estate of which such administrator or executor is the representative, he may, by application to a Court of Equity, compel such foreign administrator or executor to protect his interest according to equity and good conscience before removing such assets beyond the limits of this State.

Transfer of
stock, etc.

§ 2576. Such foreign executor or administrator may transfer bank stock standing in the name of the decedent, and check for deposits made by him or dividends declared on his stock, first filing with the bank a certified copy of his appointment and qualification.

CHAPTER IV.

OF TITLE BY JUDICIAL SALE.

SECTION.

2577. Effects in passing title.

2578. Original title.

2579. Note in writing unnecessary.

2580. *Caveat emptor*.

2581. Covenants running with land.

SECTION.

2582. Putting purchaser in possession.

2583. Seizure of personalty.

2584. Sale of stocks.

2585. Titles made by successors.

2586. Purchaser need not trace funds.

§ 2577. A sale regularly made, by virtue of judicial process,

Chapter 4.—Title by Judicial Sale.

issuing from a Court of competent jurisdiction, shall convey the title as effectually as if the sale was made by the person against whom the process issues. Effects in passing title.

§ 2578. In all controversies in the Courts of this State, the purchaser at such a sale shall not be required to show title deeds back of his purchase, unless it be necessary for his case to show good title in the person whose interest he purchased. Original title.

§ 2579. No note or memorandum in writing shall be necessary to charge any person at a judicial sale. Note in writing unnecessary.

§ 2580. The purchaser must look for himself as to the title and soundness of all property sold under judicial process. Actual fraud or misrepresentation by the officer or his agent, may bind him personally. No covenant of warranty binds him individually, unless made with that intention and for a valuable consideration. Caveat emptor. 14-58 23-56 39-28 17-27

§ 2581. The purchaser at judicial sales may enforce any covenants of warranty running with the land which may be incorporated in the previous title deeds. Covenants running with land.

§ 2582. Whenever a present interest in land is sold by any judicial officer, it shall be his duty to place the purchaser or his agent in possession of the land, and to this end he may dispossess the defendant in the process, his heirs and his tenants, or his lessees or vendees of younger date than the judgment upon which the process issues; but he may not dispossess other tenants claiming under an independent title. Putting purchaser in possession.

§ 2583. To authorize a sale of personal property there must be an actual or constructive seizure. A future interest in personalty can not be seized and sold, but the lien of judgments will attach thereto, so far as to prevent alienation, before the right to present possession accrues. Seizure of personalty. Lien on future interest.

§ 2584. Shares in a bank or other corporation, may be levied on and sold, either under attachment or *fi. fa.*, in the County where the corporation does business; notice of such levy being given to the defendant, if his residence be known, and also to the officers of the corporation. Such sales shall be made only by the Sheriff, or his deputy; and Constables levying thereon shall turn over such levies to the Sheriff. Only one share shall be sold at once. The Sheriff shall give the purchaser a certificate of his purchase, which, on presentation to the officers of the corporation, shall authorize a transfer of the stock to him. Transfers of stock after levy of an attachment, or after judgment, and with notice to the Sale of stocks. 53-24

corporation of the levy or judgment are absolutely void. If the shares be in a railroad, canal, turnpike, or plank road company, they may be levied on and sold in any County through which the same passes.

Titles made
by succes-
sor.

§ 2585. If a Sheriff fails to make titles to a purchaser, his successor in office may make them in the same manner as if he had sold the property.

Purchaser
need not
trace funds.

§ 2586. The purchaser at judicial sales is not bound to look to the appropriation of the proceeds of the sale, nor to the returns made by the officer, nor is he required to see that the officer has complied fully with all those regulations prescribed in such cases. All such irregularities create questions and liabilities between the officer and parties interested in the sale. The innocent purchaser is bound only to see that the officer has competent authority to sell, and that he is apparently proceeding to sell under the prescribed forms.

CHAPTER V.

OF TITLE BY CONTRACT.

ARTICLE 1.—*Of Private Sales.*

ARTICLE 2.—*Of Gifts.*

ARTICLE I.

OF PRIVATE SALES.

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- 2588. Sales by auction.
- 2589. Sales to defraud creditors, etc.
- 2590. Protection of *bona fide* purchaser.
- 2591. Duress or fraud.
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- 2593. Concealment when fraud.
- 2594. Mistake.
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- 2599. Contracts entire or divisible.
- 2600. Deficiency in sale of lands.

SECTION.

- 2601. Loss of land from defect of title.
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- 2605. Inadequacy.
- 2606. When due.
- 2607. Stoppage *in transitu*.
- 2608. Purchaser without notice.
- 2609. Implied warranty.
- 2610. Breach.
- 2611. Good faith.
- 2612. Defects generally.
- 2613. Patent defects.
- 2614. Barter and exchange.

§ 2587. Three elements are essential to a contract of sale: 1.

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An identification of the thing sold. 2. An agreement as to the price to be paid. 3. Consent of the parties. Essentials of sale.

§ 2588. In case of sales by auction, the auctioneer shall be considered agent of both parties, so far as to dispense with any further memorandum in writing than his own entries. Sales by auction.

§ 2589. Every sale made with intent to defraud either creditors of the vendor, or prior or subsequent purchasers, if such intention be known to the vendee, shall be absolutely void as against such creditors or purchasers. Sales to defraud creditors or purchasers.

§ 2590. Every voluntary deed or conveyance made by any person, shall be void as against subsequent bona fide purchaser for value, without notice of such voluntary conveyance. Protection of bona fide purchasers.

§ 2591. Fraud or duress, by which the consent of a party has been obtained to a contract of sale, voids the sale. Duress or fraud.

§ 2592. Fraud may exist from misrepresentation by either party, made with design to deceive, or which does actually deceive the other party; and in the latter case such misrepresentation voids the sale, though the party making it was not aware that his statement was false. Such misrepresentation may be perpetrated by acts as well as words, and by any artifices designed to mislead. A misrepresentation, not acted on, is not ground for annulling a contract. What is fraud.

§ 2593. Concealment of material facts may, in itself, amount to a fraud— Concealment—when fraud.

1. When direct inquiry is made and the truth evaded. —

2. When, from any reason, one party has a right to expect a full communication of the facts from the other.

3. Where one party knows that the other is laboring under a delusion with respect to the property sold or the condition of the other party, and yet keeps silence.

4. Where the concealment is of intrinsic qualities of the article which the other party, by the exercise of ordinary prudence and caution, could not discover.

§ 2594. Mistake of law, if not brought about by the other party, is no ground for annulling a contract of sale. Mistake of a material fact may, in some cases, justify a rescission of the contract; mere ignorance of a fact will not. Mistake.

§ 2595. Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the Duress.

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will of another, and actually inducing him to do an act contrary to his free will.

§ 2596. A bare contingency or possibility can not be the subject of sale, unless there exists a present right in the person selling, to a future benefit: so a contract for the sale of goods to be delivered at a future day where both parties are aware that the seller expects to purchase himself to fulfill his contract, and no skill and labor or expense enters into the consideration, but the same is a pure speculation upon chances, is contrary to the policy of the law, and can be enforced by neither party.

§ 2597. The seller can convey no greater title than he has himself. The *bona fide* purchaser of a negotiable paper not dishonored, or of money, or bank bills, or other recognized currency, will be protected in his title, though the seller had none. There is no "market overt" in Georgia.

§ 2598. A title obtained by fraud, though voidable in the vendee, will be protected in a *bona fide* purchaser without notice.

§ 2599. The contract of sale may be entire or divisible. If entire, a failure in part voids the whole; if divisible, the voidance is only in porportion and to the extent of the failure. The intention of the parties determines the question of entirety or divisibility.

§ 2600. In a sale of lands, if the purchase is *per acre*, a deficiency in the number of acres may be apportioned in the price. If the sale is by the tract or entire body, a deficiency in the quantity sold can not be apportioned. If the quantity is specified as "more or less," this qualification will cover any deficiency not so gross as to justify the suspicion of willful deception, or mistake amounting to fraud; in this event the deficiency is apportionable: the purchaser may demand a rescission of the sale or an apportionment of the price according to relative value.

§ 2601. If the purchaser loses part of the land from defect of title, he may claim either a rescission of the entire contract, or a reduction of the price according to the relative value of the land so lost.

§ 2602. Generally, the delivery of goods is essential to the perfection of a sale. The intention of the parties to a contract may dispense therewith: delivery need not be actual; constructive delivery may be inferred from a variety of facts. Until delivery is made or dispensed with, the goods are at the risk of the seller.

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§ 2603. When the sale is of goods to be manufactured and delivered at a future time, the question of risk will depend upon the fact to be ascertained in each case, whether the parties stipulate for a particular article in course of construction, or an article filling the specification of the contract. In the former case the title passes to the vendee before delivery; in the latter it does not. Sales of articles being manufactured.

§ 2604. A valuable consideration is essential to a sale: it must either be definite or an agreement made by which it can be made certain; if its ascertainment becomes impossible, there is no sale. Consideration.

§ 2605. Inadequacy of price is no ground for rescission of a contract of sale, unless it is so gross as combined with other circumstances to amount to a fraud. Inadequacy.

§ 2606. Unless credit is specifically agreed on, or is the custom of the trade, the purchase money is due immediately, and the seller may demand payment before delivering the goods. When due.

§ 2607. If the goods are delivered before the price is paid, the seller can not retake because of failure to pay; but until actual receipt by the purchaser the seller may at any time arrest them on the way and retain them until the price is paid. If credit has been agreed to be given, but the insolvency of the purchaser is made known to the seller, he may still exercise the right of stoppage *in transitu*. Stoppage in transitu.

§ 2608. A *bona fide* assignee of the bill of lading of goods for a valuable consideration, and without notice that the same were unpaid for, and the purchaser insolvent, will be protected in his title against the seller's right of stoppage *in transitu*. Purchaser without notice.

§ 2609. If there is no express covenant of warranty, the purchaser must exercise caution in detecting defects: the seller, however, in all cases (unless expressly or from the nature of the transaction excepted) warrants— Implied warranty.

1. That he has a valid title and right to sell.

2. That the article sold is merchantable, and reasonably suited to the use intended.

3. That he knows of no latent defects undisclosed.

§ 2610. A breach of warranty, express or implied, does not annul the sale if executed, but gives the purchaser a right to damages. It may be pleaded in abatement of the purchase money. If the sale be executory, it is a good reason for the purchaser to refuse to accept possession of the goods. Breach. Effect of.

§ 2611. Covenants of warranty should be so construed as to

Article 2.—Gifts.

Good faith. require and encourage the utmost good faith in all contracting parties.

Defects generally. § 2612. Any vice or defect in the thing sold which renders it either absolutely useless, or its use so inconvenient and imperfect that it is reasonable to suppose that the purchaser would not have contracted had he knowledge of its existence, is such a latent defect as good faith requires the seller to disclose.

Patent defects. § 2613. Patent defects are not covered by a general express warranty, unless intended to be so covered. In proof of this intention, parol evidence is admissible.

Barter and exchange. § 2614. Contracts of barter or exchange stand upon the same footing with private sales, so far as the same principles can be applied to them.

ARTICLE II.

OF GIFTS. 15 Corran 598.

SECTION.	SECTION.
2615. Essentials.	2621. Presumption of gift.
2616. Acceptance.	2622. Of lands.
2617. Effect of written deed.	2623. Loan to married daughters.
2618. Delivery.	2624. Gifts by persons, etc.
2619. Void conditions.	2625. Gifts for illegal purposes.
2620. Gifts void against creditors, etc.	2626. <i>Donatio causa mortis</i> .

Essentials. § 2615. To constitute a valid gift, there must be the intention to give by the donor, acceptance by the donee and delivery of the article given, or some act accepted by the law in lieu thereof.

Acceptance. § 2616. If the donation be of substantial benefit, the law presumes the acceptance, unless the contrary be shown. A parent, guardian, or friend, may accept for an infant. The officers of a corporation accept for it.

Effect of written deed. § 2617. When the law requires a conveyance in writing to the validity of a gift, or the conveyance is made for a good consideration, such conveyance, executed and delivered, will dispense with the necessity of a delivery of the article given. A gift in writing, without good consideration and without delivery, is void.

Delivery. § 2618. Actual manual delivery is not essential to the validity of a gift. Any act which indicates a renunciation of dominion by the donor, and the transfer of dominion to the donee, is a constructive delivery.

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§ 2619. Impossible, illegal, or immoral conditions, are void, and do not invalidate a perfect gift. Void conditions.

§ 2620. An insolvent person can not make a valid gift to the injury of his existing creditors; and where possession, partially or entirely, remains with the donor, every parol gift is void against *bona fide* creditors and purchasers without notice. Gifts void against creditors, etc.

§ 2621. The delivery of personal property by a parent into the exclusive possession of a child living separate from the parent, shall create a presumption of a gift to the child; this presumption may be rebutted by evidence of an actual contract of lending, or from circumstances from which such a contract may be inferred. Presumption of gifts.

§ 2622. The exclusive possession by a child of lands belonging originally to a father, without payment of rent, for the space of seven years, shall create conclusive presumption of a gift, and convey title to the child, unless there is evidence of a loan, or of a claim of dominion by the father acknowledged by the child, or of a disclaimer of title on the part of the child. Of lands.

§ 2623. If the child be a married daughter, the contract of loan referred to in the two preceding paragraphs must be assented to by the husband to rebut the presumption of a gift. Loans to married daughters.

§ 2624. A gift by any person just arrived at majority, or otherwise peculiarly subject to be affected by such influences, to his parent, guardian, trustee, attorney, or other person standing in a similar relationship of confidence, shall be scrutinized with great jealousy, and upon the slightest evidence of persuasion, or influence toward this object shall be declared void, at the instance of the donor, or his legal representative, at any time within five years after the making of such gift. Gifts by persons lately minors, etc.

§ 2625. If a gift be made for a specific purpose, expressed or secretly understood, and such purpose is illegal, or from other cause fails or can not be accomplished, the donee shall hold as trustee for the donor or his next of kin. Gifts for illegal purposes.

§ 2626. A gift in contemplation of death (*donatio causa mortis*) must be made by a person during his last illness, or in peril of death, must be intended to be absolute only in the event of death, and must be perfected by either actual or symbolical delivery. Such a gift, so evidenced, may be made of any personal property by parol, and proved by one or more witnesses. Donatio causa mortis.

CHAPTER VI.

OF TITLE BY ESCHEATS AND FORFEITURE.

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2627. Escheat.
 2628. Alien heirs.
 2629. Escheator.
 2630. Duty of Ordinary.
 2631. Proceeds—how disposed of.

SECTION.

2632. Counsel for escheator.
 2633. Claim within six years.
 2634. Forfeiture.
 2635. Other forfeitures.

Escheat. § 2627. Escheat is where, upon failure of heirs, the estate of an intestate falls to the State. In no other case does an estate escheat in Georgia.

Alien heirs. a § 2628. If the heirs of an intestate, or the devisees of land of a testator be incapable of holding title to lands, the Ordinary shall order the legal representative of the estate to sell the lands, and pay over the proceeds to such devisee or next of kin.

Escheator. § 2629. The Clerk of the Inferior Court of each County shall be the escheator of such County, and as such shall be entitled to administration, and shall apply for administration on the estate of every person dying in such County intestate, and without known heirs or next of kin; or if administration be already granted to another, such Clerk, as escheator, shall have the right to call such administrator to account, and receive from him the property, when declared to be escheated to the State.

Duty of Ordinary. § 2630. The escheator, so soon as he shall obtain possession of the estate as administrator, shall make known to the Ordinary of the County the fact that the same has apparently escheated to the State, whereupon the said Ordinary shall pass an order requiring the said administrator to advertise, by publication in one or more papers in this and other States, according to the circumstances of each case, notifying all persons interested as next of kin of such deceased person, of the fact and date of his death, the amount of the estate, and the pendency of proceedings to escheat the same; which publication shall be continued for six months. If no person shall appear and claim as heir within twelve months from the date of the first publication, the Ordinary shall pass an order declaring the said property escheated to the State. If any person claims the property alleged to be escheated, the claim shall be interposed, and tried as claims at administrators' sales.

Claimants. § 2631. The proceeds of escheated property shall be paid, in

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each County, to the Ordinary, or other treasurer of the Educational Fund of such County, to become a part of such fund.

Proceeds—
how dispos-
ed of.

§ 2632. In all trials arising in reference to escheated property the Solicitor General shall be, *ex officio*, counsel for the escheator.

The Solicitor General
counsel for the
escheator.

§ 2633. The next of kin, or heir of such deceased person, may, at any time within six years after such order declaring the estate escheated (or if laboring under any disability, within three years after the removal of the same), bring suit against the treasurer of said Educational Fund for the principal of the said sum without interest, and upon proof of his right thereto, may recover the same without costs.

Claim with-
in six years.

§ 2634. Forfeiture to the State for crime, is abolished in this State, except so far as the lien which the State holds upon all the property of an offender for the costs of the prosecution against him.

Forfeiture.

§ 2635. Forfeitures are worked by various acts, specified in different parts of this Code, for the benefit of persons named therein.

Other for-
feitures.

CHAPTER VII.

OF TITLE BY PRESCRIPTION.

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- 2636. Prescription.
- 2637. Adverse possession.
- 2638. Actual possession.
- 2639. Constructive possession.
- 2640. Possession for twenty years.
- 2641. Possession for seven years.

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- 2642. Dedication.
- 2643. Prescription for personalty.
- 2644. Disabilities.
- 2645. Stops the prescription.
- 2646. Other exceptions.
- 2647. Transfer of prescriptive title.

§ 2636. Title by prescription is the right which a possessor acquires to property by reason of the continuance of his possession for a period of time fixed by the laws.

Prescrip-
tion.

§ 2637. Possession to be the foundation of a prescription must be in the right of the possessor, and not of another; must not have originated in fraud; must be public, continuous, exclusive, uninterrupted, and peaceable, and be accompanied by a claim of right. Permissive possession can not be the foundation of a prescription, until an adverse claim and actual notice to the other party.

Adverse
possession.

§ 2638. Actual possession of lands is evidenced by enclosure, cultivation, or any use and occupation thereof which is so noto-

Actual pos-
session.

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rious as to attract the attention of every adverse claimant, and so exclusive as to prevent actual occupation by another.

Constructive possession. § 2639. Constructive possession of lands is where a person having paper title to a tract of land is in actual possession of only a part thereof. In such a case, the law construes the possession to extend to the boundary of the tract. Hence, adjacent owners may be in constructive possession of the same land, being included in the boundaries of each tract. In such cases, no prescription can arise in favor of either.*

Possession for twenty years. § 2640. Actual adverse possession of lands by itself, for twenty years, shall give good title by prescription against every one, except the State or persons laboring under the disabilities herein after specified.

Possession for seven years. § 2641. Adverse possession of lands, under written evidence of title, for seven years, shall give a like title by prescription. But if such written title be forged or fraudulent, and notice thereof be brought home to the claimant before or at the time of the commencement of his possession, no prescription can be based thereon.

Dedication. § 2642. If the owner of lands, either expressly or by his acts, dedicates the same to public use, and the same is so used for such a length of time that the public accommodation or private rights might be materially affected by an interruption of the enjoyment, he can not afterward appropriate it to private purposes.

Prescription for personalty. § 2643. Adverse possession of personal property within this State, for four years, shall give a like title by prescription. No prescription arises if the property be concealed or removed out of the State, or otherwise is not subject to reclamation.

Disabilities. § 2644. No prescription works against the rights of a minor during infancy, of a married woman during coverture, of a person imprisoned during his confinement, or of an insane person so long as the insanity continues; but each of these shall have a like number of years, after the disability is removed, to assert his claim and title to realty or personalty against the person prescribing.

Stop the prescription. § 2645. A prescription commenced shall cease against persons under disability pending the disability, but on removal thereof, the prior possession may be tacked or added to the subsequent possession to make out the prescription.

* See Title 8, Chapter 3, Article 1.

Article 1.—Of Conveyances of Titles Generally.

§ 2646. A prescription does not run against an unrepresented estate until representation, *provided* the lapse does not exceed five years; nor against a joint title which can not be severally enforced, and a portion of the owners labor under either of the foregoing disabilities; nor in cases of fraud debarring or deterring the other party from his action until the fraud is discovered; nor against a party who commences his action in time, but is non-suited, or dismisses for one time and recommences within six months.

Other exceptions.

§ 2647. An inchoate prescriptive title may be transferred by a possessor to a successor, so that the successive possessions may be tacked to make out the prescription.

Transfer of prescriptive title.

CHAPTER VIII.

OF CONVEYANCES OF TITLES.

ARTICLE 1.—*Generally.*ARTICLE 2.—*Covenants and Warranty.*ARTICLE 3.—*Registration.*

ARTICLE I.

GENERALLY.

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- 2648. Requisites of a deed.
- 2649. Future interest.
- 2650. Form of deed.
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- 2652. Deed of infant.
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SECTION.

- 2654. Deeds to personalty.
- 2655. Inconsistent clauses.
- 2656. Recitals.
- 2657. Estoppel.
- 2658. Ancient deed.
- 2659. Establishing copies, etc.

§ 2648. A deed to lands in this State must be in writing, signed by the maker, attested by at least two witnesses, and delivered to the purchaser, or some one for him, and be made on a valuable or good consideration. The consideration of a deed may be always inquired into when the principles of justice require it.*

Requisites of a deed.

§ 2649. A future interest or estate may be conveyed by deed;

* See further as to considerations, Title 8, on contracts, Chapter 3.

Article 1.—Of Conveyances of Titles Generally.

Future interest. but it must operate to transfer the title immediately, or the instrument will be testamentary and revocable.

Form of deed. § 2650. No prescribed form is essential to the validity of a deed to lands or personalty. If sufficient in itself to make known the transaction between the parties, no want of form will invalidate it.

Escrows. § 2651. A deed delivered to another to be delivered on certain conditions to the grantee, is an escrow. Possession of the deed by the grantee is presumptive proof of a delivery, but may be rebutted.

Deed of an infant. § 2652. The deed of an infant is voidable at his pleasure on majority. The making of another deed at that time voids the first, without an entry on the lands.

Adverse possession. § 2653. A deed to lands, made while the same are held adversely to the maker of the deed, is not void.

Deeds to personalty. § 2654. A deed to personalty needs no attesting witness to make it valid; in other respects the principles applicable to deeds to lands are applicable to it. Generally, a deed is not necessary to convey titles to personalty.

Inconsistent clauses. § 2655. If two clauses in a deed be utterly inconsistent, the former must prevail, but the intention of the parties, from the whole instrument, should, if possible, be ascertained and carried into effect.

Recitals. § 2656. The recital in a deed of the receipts of the purchase money, does not estop the maker from denying the fact and proving the contrary.

Estoppel. § 2657. The maker of a deed can not subsequently claim adversely to his deed under a title acquired since the making thereof. He is estopped from denying his right to sell and convey.

Ancient deed. § 2658. A deed more than thirty years old, having the appearance of genuineness on inspection, and coming from the proper custody, if possession has been consistent therewith, is admissible in evidence without proof of execution.

Copies established—how. § 2659. If an original deed be lost, a copy may be established by the Superior Court of the County where the land lies, and when so established, shall have all the effect of the original.

Article 2.—Covenants and Warranty.

ARTICLE II.

OF COVENANTS AND WARRANTY.

SECTION.

2660. Covenants running with lands.

2661. General warranty.

SECTION.

2662. Offer to rescind.

§ 2660. The purchaser of land obtains with the title, however conveyed to him, at public or private sale, all the rights which any former owner of the land, under whom he claims, may have had by virtue of any covenants of warranty of title, or of quiet enjoyment, or of freedom from incumbrances, contained in the conveyance from any former grantor, unless the transmission of such covenants with the land is expressly negatived in the covenant itself.

Covenants running with lands.

§ 2661. A general warranty of title against the claims of all persons, includes in itself covenants of a right to sell, and of quiet enjoyment and of freedom from incumbrances.

General warranty.

§ 2662. An offer to rescind is not necessary to a recovery upon a covenant of warranty. An offer by the warrantor to rescind, and a refusal by the warantee, should be considered in estimating damages.*

Offer to rescind.

ARTICLE III.

OF REGISTRATION.

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2663. When and where recorded.

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2665. Probate by witness.

2666. By other persons.

2667. Record of execution.

SECTION.

2668. Bills of sale to personalty.

2669. Former acts continued.

2670. Original deed evidence.

2671. Copy—when evidence.

§ 2663. Every deed conveying lands shall be recorded in the office of the Clerk of the Superior Court of the County where the land lies within one year from the date of such deed. On failure to record within this time the record may be made at any time thereafter; but such deed loses its priority over a subsequent deed from the same vendor, recorded in time, and taken without notice of the existence of the first.

When and where recorded.

* As to damages for breach of covenants, see Part 2, Title 7, on contracts, Chapter 10. For other provisions as to warrantees, see Chapter 5, Article 1, of this Title on private sales.

Article 3.—Registration.

§ 2664. To authorize the record of a deed to realty or person-
 Attestation. alty it must be attested, if executed out of this State, by a commissioner of deeds for the State of Georgia, or a Consul or Vice Consul of the United States (the certificates of these officers, under their seals, being evidence of the fact), or by a Judge of a Court of Record in the State where executed, with a certificate of the Clerk, under the seal of such Court, of the genuineness of the signature of such Judge. If executed in this State, it must be attested by a Judge of a Court of Record of this State, or a Justice of the Peace, or Notary Public, or Clerk of the Superior Court in the County in which the three last mentioned officers, respectively, hold their appointments; or if subsequent to its execution the deed is acknowledged in the presence of either of the above named officers, that fact, certified on the deed by such officer, shall entitle it to be recorded.

§ 2665. If a deed is neither attested by, nor acknowledged before either of the officers aforesaid, it may be admitted to record by Probate witness. upon the affidavit of a subscribing witness, before either of the above named officers, testifying to the execution of the deed and its attestation according to law. A substantial compliance with this requisition shall be held sufficient in the absence of all suspicion of fraud.

§ 2666. If the subscribing witness, or witnesses, be dead, or lunatic, or removed without the State, or otherwise incapacitated to make the affidavit, the affidavit of a third person to the fact, and to the genuineness of the handwriting of the subscribing witness, or witnesses, shall be sufficient to admit the deed to record. By other persons.

§ 2667. A purchaser at Sheriff's sale may have the execution under which the property was sold recorded with his deed, together with all the entries on said execution; and in the event of the loss or destruction of the original execution, a copy of such record shall be admitted in evidence. Record of execution.

§ 2668. Deeds and bills of sale to personalty may be recorded in the office of the Clerk of the Superior Court of the County where the maker resides. Such record being permissive and not compulsory, is not constructive or implied notice to any one: it is otherwise, where the law requires the record to be made, and it is properly made. Bills of sale to personalty.

§ 2669. All deeds heretofore, by any act, declared valid, or where improperly recorded, the record has been declared valid or

Article 3.—Registration.

sufficient, shall continue under this Code in the same situation as Former acts continued.
if the original acts remained in force.

§ 2670. A registered deed shall be admitted in evidence in any Original deed evidence.
Court in this State without further proof, unless the maker of the deed, or one of his heirs, or the opposite party in the cause, will file an affidavit that the said deed is a forgery, to the best of his knowledge and belief—when the Court shall arrest the cause and require an issue to be made and tried as to the genuineness of the Issue made and tried.
alleged deed.

§ 2671. If the original deed be lost, a copy from the registry, Copy—when evidence.
if duly recorded, shall be admitted in evidence whenever the Court is satisfied of the fact of loss or destruction—and to this fact the party may be a witness.*

TITLE VII.

OF CONTRACTS.

- CHAPTER 1.—*General Principles.*
- CHAPTER 2.—*Of the Parties.*
- CHAPTER 3.—*Of the Consideration.*
- CHAPTER 4.—*Of Illegal and Void Contracts.*
- CHAPTER 5.—*Of Construction of Contracts.*
- CHAPTER 6.—*Of Court Contracts.*
- CHAPTER 7.—*Of Bills of Exchange, Promissory Notes, etc.*
- CHAPTER 8.—*Of Contracts of Insurance.*
- CHAPTER 9.—*Of Defenses to Contracts.*
- CHAPTER 10.—*Of Breach and Damages.*

* As to deeds to churches and other societies, see Act of 1805, Cobb's new Digest, p. 899; and Act of 1856, Laws of 1855-6, p. 272.

CHAPTER I.

GENERAL PRINCIPLES.

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 2676. Simple contracts.
 2677. Parol contracts.
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 2679. Absolute or conditional.

SECTION.

2680. Conditions precedent, etc.
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 2682. Novation.
 2683. Entire or severable.
 2684. Apportionment.
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What is a
contract.

§ 2672. A contract is an agreement between two or more parties for the doing or not doing of some specified thing.

Executed or
executory.

§ 2673. An executed contract is one in which all the parties thereto have performed all the obligations which they have originally assumed. An executory contract is one in which something remains to be done by one or more parties.

Of record.

§ 2674. A contract of record is one which has been declared and adjudicated by a Court having jurisdiction, or which is entered of record in obedience to, or in carrying out, the judgments of a Court.

Specialty.

§ 2675. A specialty is a contract under seal, and is considered by the law as entered into with more solemnity, and consequently of higher dignity, than ordinary simple contracts.

Simple
contracts.

§ 2676. All other contracts than those specified above, are termed simple contracts.

Parol con-
tracts.

§ 2677. Simple contracts may be either in writing, or rest only in words, as remembered by witnesses. Parol contracts under this Code shall include only the latter.

Essentials.

§ 2678. To constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject-matter upon which it can operate.

Absolute or
conditional.

§ 2679. A contract may be absolute or conditional. In the former, every covenant is independent, and the breach of one does not relieve the obligation of another. In the latter, the covenants are dependent the one upon the other, and the breach of one is a release of the binding force of all dependent covenants. The classification of every contract must depend upon a rational interpretation of the intention of the parties.

Chapter 1.—General Principles.

§ 2680. Conditions may be precedent or subsequent. In the former, the condition must be performed before the contract becomes absolute and obligatory upon the other party. In the latter, the breach of the condition may destroy the party's rights under the contract, or may give a right to damages to the other party, according to a true construction of the intention of the parties. *1 Smith L.C. 1093*

Conditions precedent and subsequent.

§ 2681. Impossible, immoral, and illegal conditions, are void, and are binding upon no one.

Void conditions.

§ 2682. One simple contract as to the same matter, and on no new consideration, does not destroy another between the same parties; but if new parties are introduced by novation, so as to change the person to whom the obligation is due, the original contract is at an end.

Novations.

§ 2683. A contract may be either entire or severable. In the former, the whole contract stands or falls together. In the latter, the failure of a distinct part does not void the remainder. The character of the contract in such case is determined by the intention of the parties.

Entire or severable.

§ 2684. In some cases, even an entire contract is apportionable; as where the price to be paid is not fixed, or is by the contract itself apportioned according to time—so if the failure of one party to perform is caused by the act of the other, the contract may still be apportioned.

Apportionment.

§ 2685. The consent of the parties being essential to a contract, until each has assented to all the terms, the contract is incomplete; until assented to, each party may withdraw his bid or proposition, unless a given time is agreed on in which the other party may assent.

Assent.

§ 2686. If the proposition is made by letter, the acceptance by written reply takes effect from the time it is sent, and not from the time it is received; hence the proposer can not withdraw in the meantime. If the latter contains alternative propositions, the party receiving may elect.* *4 L.C. 1.*

Contract by letter.

*As to the contracts which, to be binding, must be in writing, see Title 3, Chapter 2, Article 1.

Courts do not make contracts
35 L.C. 180

CHAPTER II.

OF THE PARTIES.

SECTION.

2687. Personal disabilities.
 2688. *Feme covert*.
 2689. Infant—when bound.
 2690. Personal exemption.
 2691. Infants doing business, etc.

SECTION.

2692. Marriage contracts of infants.
 2693. Insane persons.
 2694. Incapacity may be pleaded.
 2695. Drunkard.
 2696. *Lex loci* contractors.

Personal disabilities. § 2687. The following persons can not generally make a valid contract: Married women, infants, insane persons, and drunkards.

Feme covert. § 2688. The contracts of a married woman are generally void.*

Infant—when bound. § 2689. The contracts of an infant under twenty-one years of age are void, except for necessities; and for necessities, they are not valid unless the party furnishing them proves that the parent or guardian fails or refuses to supply sufficient necessities for the infant. If, however, the infant receives property, or other valuable consideration, and after arrival at age retains possession of such property, or enjoys the proceeds of such valuable consideration, such a ratification of the contract shall bind him.

Personal exemption. § 2690. The exemption of the infant is a personal privilege. The party contracting with him can not plead it, unless he was ignorant of the fact at the time of the contract; nor can third persons avail themselves of it as a defense.

Infants doing business, etc. § 2691. If an infant, by permission of his parent or guardian, or by permission of law, practices any profession or trade, or engages in any business as an adult, he shall be bound for all contracts connected with such profession, trade, or business.

Marriage contracts of infants. § 2692. Marriage contracts and settlements made by infants, but of lawful age to marry, are binding, as if made by adults.

Insane persons. § 2693. An insane person can not contract prior to commission sued out and guardianship appointed. A lunatic may contract during lucid intervals; after guardianship, he can not, nor can a person restored to sanity contract until the guardianship is dissolved. Necessaries furnished an insane person may be recovered upon the same proof as if furnished to infants.

May plead incapacity. § 2694. A man may plead his own incapacity to contract.

† For the exceptions to this rule, see Part 2, Title 2, Chapter 1, Article 2.

Chapter 3.—Of the Consideration.

§ 2695. A drunkard, when actually intoxicated to such an extent as to deprive him of reason, can make no valid contract with any one cognizant of the fact of his condition. If the party contracting was at all instrumental in producing the state of intoxication, the contract is invalid, however partial the intoxication may be. Drunkard.

§ 2696. Sometimes persons are capable to contract by the law of the place of the contract, but incapable under the law of this State. In such case, generally, the law of the place of the contract is enforced, unless the circumstances show an attempt to evade the law of this State, or the contract is of such a character as contravenes the policy of our law.* Lex loci contractors.
38-179
13-586
Hill & Wilkins & Co.

CHAPTER III.

OF THE CONSIDERATION.

SECTION.

- 2697. *Nudum pactum*.
- 2698. Valid consideration.
- 2699. Good and valuable.
- 2700. Inadequacy of consideration.
- 2701. Mistake.

SECTION.

- 2702. Mutual promises.
- 2703. Good in part and bad in part.
- 2704. Impossible consideration.
- 2705. Consideration moving from another
- 2706. Failure of consideration.

§ 2697. A consideration is essential to a contract which the law will enforce. An executory contract, without such consideration, is called *nudum pactum*, or a naked promise. In some cases, a consideration is presumed, and an averment to the contrary will not be received. Such are generally contracts under seal, and negotiable instruments alleging a consideration upon their face, in the hands of innocent holders without notice, who have received the same before dishonored. Nudum pactum.
Presumption of consideration.

§ 2698. A consideration is valid if any benefit accrues to him who makes the promise, or any injury to him who receives the promise. Valid consideration.

§ 2699. Considerations are distinguished into good and valuable. A good consideration is such as is founded on natural duty and affection, or on a strong moral obligation. A valuable consideration is founded on money, or something convertible to money, Good and valuable.

* See General Preliminary Principles.

Chapter 3.—Of the Consideration.

or having a value in money, except marriage, which is a valuable consideration.

Inadequacy
of consider-
ation.

§ 2700. Mere inadequacy of consideration alone will not void a contract. If the inadequacy be great, it is a strong circumstance to evidence fraud; and on a suit for damages for breach of the contract, the inadequacy of the consideration will always enter as an element in estimating the damages.

Mistake.

§ 2701. If the consideration be founded in a mistake of fact or of law, the promise founded thereon can not be enforced.

Mutual
promises.

§ 2702. A promise of another is a good consideration for a promise. So in mutual subscriptions for a common object—the promises of the others is a good consideration for the promise, of each.

Good in part
and bad in
part.

§ 2703. If the consideration be good in part and void in part the promise will be sustained or not, according as it is entire or severable, as hereinafter prescribed. But if the consideration be illegal in whole or in part, the whole promise fails.

Impossible
considera-
tion.

§ 2704. An impossible consideration is insufficient to sustain any promise; otherwise, if the consideration be possible but improbable.

Considera-
tion mov-
ing from
another.

§ 2705. If there be a valid consideration for the promise, it matters not from whom it moved: the promisee may sustain his action, though a stranger to the consideration.

Failure
of consider-
ation.

§ 2706. If the consideration, apparently good or valuable, fails either wholly or in part before the promise is executed, such failure may be pleaded in defense to the promise. If it be partial, an apportionment must be made according to the facts of each case.

CHAPTER IV.

OF ILLEGAL AND VOID CONTRACTS.

SECTION.

- 2707. Void.
- 2708. Against public policy.
- 2709. Fraud.

SECTION.

- 2710. Duress.
- 2711. Gaming contracts.

Void.

§ 2707. A contract to do an immoral or illegal thing is void. If the contract be severable, that which is legal will not be annulled by that which is illegal.

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21 " 297

Chapter 4.—Illegal and Void Contracts.

§ 2708. A contract which is against the policy of the law can not be enforced; such are contracts tending to corrupt legislation or the judiciary, contracts in general in restraint of trade, contracts to evade or oppose the revenue laws of another country, wagering contracts, contracts of maintenance or champerty. Against public policy. 35-177

§ 2709. Fraud voids all contracts. Fraud may not be presumed, but being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence. Chitt. § 60-82-16 Chap. Fraud.

§ 2710. The free assent of the parties being essential to a valid contract, duress, either of imprisonment or by threats, or other arts, by which the free will of the party is restrained, and his consent induced, will void the contract. Legal imprisonment, if not used for illegal purposes, is not duress. Duress. 16 Chap. 575

§ 2711. Gaming contracts are void, and all evidences of debt or incumbrances or liens on property, executed upon a gaming consideration, are void in the hands of any person. Money paid or property delivered up, upon such consideration, may be recovered back from the winner by the loser, if he shall sue for the same in six months after the loss, and after the expiration of that time, it may be sued for by any person, at any time within four years, for the joint use of himself and the Educational Fund of the County.* Gaming contracts. Suits to recover back.

CHAPTER V.

OF CONSTRUCTION OF CONTRACTS.

SECTION.

2712. By whom construed.

2713. Intention of parties.

SECTION.

2714. Or of one party known to the other.

2715. Rules of interpretation.

§ 2712. The construction of a contract is a question for the Court. Where any matter of fact is involved (as the proper reading of an obscurely written word), the jury should find the fact. By whom construed.

§ 2713. The cardinal rule of construction is to ascertain the intention of the parties. If that intention be clear, and it contra- Intention of parties.

* As to contracts void against creditors, see Part 2, Title 3, Chapter 2, Article 2; and against purchasers, see Part 2, Title 6, Chapter 5, Article 1.

Chapter 5.—Construction of Contracts.

venes no rule of law, and sufficient words be used to arrive at the intention, it shall be enforced, irrespective of all technical or arbitrary rules of construction.

§ 2714. The intention of the parties may differ among themselves. In such case, the meaning placed on the contract by one party, and known to be thus understood by the other party, at the time, shall be held as the true meaning.

Or of one party known to the other.

Rules of interpretation.

§ 2715. The following rules among others may aid in arriving at the true interpretation of contracts:

Parol evidence, etc.

1. Parol evidence is inadmissible to add to, take from or vary a written contract. All the attendant and surrounding circumstances may be proved, and if there is an ambiguity, latent or patent, it may be explained; so if a part of a contract only is reduced to writing (such as a note given in pursuance of a contract), and it is manifest that the writing was not intended to speak the whole contract, then parol evidence is admissible.

Meaning of words.

2. Words generally bear their usual and common signification; but technical words, or words of art, or used in a particular trade or business, will be construed, generally, to be used in reference to this peculiar meaning. The local usage or understanding of a word may be proved in order to arrive at the meaning intended by the parties.

Whole contract to be considered.

3. The construction which will uphold a contract in whole and in every part, is to be preferred, and the whole contract should be looked to in arriving at the construction of any part.

Strongest against promisee.

4. If the construction is doubtful, that which goes most strongly against the party executing the instrument, or undertaking the obligation, is generally to be preferred.

Grammatical construction.

5. The rules of grammatical construction usually govern, but to effectuate the intention they may be disregarded; sentences and words may be transposed, and conjunctions substituted for each other. In extreme cases of ambiguity, where the instrument, as it stands, is without meaning, words may be supplied.

Printing.

6. When a contract is partly printed and partly written, the latter part is entitled to most consideration.

Implied estates.

7. Estates and grants, by implication, are not favored.

Time.

8. Time is not generally of the essence of a contract; but by express stipulation or reasonable construction, it may become so.

CHAPTER VI.

OF COURT CONTRACTS.

SECTION.

- 2716. Contract—where filed.
- 2717. Its designation and effect.
- 2718. Issues of fact—how tried.
- 2719. Contract—how enforced.
- 2720. Order—how carried out.
- 2721. Damages—how awarded.
- 2722. Rescission of contract.
- 2723. Rule of decision.

SECTION.

- 2724. Construction.
- 2725. Expiration of term.
- 2726. Power of Court continues.
- 2727. Suit on contract.
- 2728. Contract set aside for fraud.
- 2729. Execution of contract.
- 2730. Remedy cumulative only.

§ 2716. [Any written agreement for a term of service not exceeding one year, or for the lease, rent, or occupation, of lands or tenements, not exceeding a like term, may at the option of the parties be filed in the office of the County Court—the parties, or either of them, retaining a duplicate, if they so desire.] (a) Agreement
—where filed

§ 2717. [An agreement thus filed, shall be known as a Court contract, and shall have the force and effect of a judgment or decree, for the specific performance of its terms, both as to express stipulations and the plain duties and obligations resulting therefrom, by implication of law.] (a) Its design-
ation and
effect.

§ 2718. [All issues of fact arising under a Court contract, by the provisions of this Chapter, shall be tried by a jury, when either party demands it.] (a) Issues—
how tried.

§ 2719. [Performance of the stipulations, duties, and obligations of a Court contract, may from day to day, and from time to time, be enforced by the County Court, by orders entered on the minutes for that purpose.] (a) Perform-
ance.

§ 2720. [Such orders may be carried into effect by attachment for contempt, or any other writ, execution, or process, known to the law and used in any Court for affording redress to parties, or for maintaining its own authority and dignity.] (a) Orders—
how carried
out.

§ 2721. [Damages for a breach of a Court contract may be awarded by similar orders, and payment thereof enforced by like means as those specified in the preceding Section.] (a) Damages.

§ 2722. [At the election of the party aggrieved, the contract may be declared rescinded, and such party restored to his original situation as nearly as possible.] (a) Rescission.

Chapter 6.—Court Contracts.

§ 2723. [Any other order requisite to the attainment of substantial justice, in the particular case, may also be passed and enforced; the Court always keeping in view, as cardinal points, that each party is to be compelled to perform his contract, or to forfeit, for any material default, the whole or a part of its benefits, and in addition thereto to make full and fair compensation to the opposite party for any damage occasioned by a breach thereof.] (a)

§ 2724. [In construing the contract, time is to be regarded as of the essence of the same. Whatever is stipulated to be done by either party, must be done at the very time or times specified, unless rendered impossible by the act of God, or the act of law.] (a)

§ 2725. [At the expiration of the term fixed by the contract, the relation established thereby, shall cease without notice to or from either party.] (a)

§ 2726. [The power of the County Court, by appropriate orders, to compel payments, or to award and collect damages, or to place the parties in their former situation, shall nevertheless continue, subject only to the condition that any order for one or more of these purposes shall be applied for within two months after the expiration of the time limited in the contract for its full and final performance.] (a)

§ 2727. [Breeches not proceeded for as set forth in the preceding Section, may be the subject of regular suit or action at any time within the statutory period applicable to similar actions on other contracts.] (a)

§ 2728. [A Court contract may be set aside in the County Court, for fraud, by a direct proceeding for that purpose, or it may be collaterally impeached for fraud, either in that Court or in any other.] (a)

§ 2729. [No Court contract shall bind any party who signs the same by making his mark, unless said writing in its attestation clause, or elsewhere, specify that it was read over in the hearing of such party, or unless it is made to appear by direct and positive evidence that the party could easily read ordinary writing for himself, or that the instrument in question was, in fact, fully and correctly read to him at the time of its execution.] (a)

§ 2730. [The remedy hereinbefore provided for in the County Court, on Court contracts, is not exclusive, but cumulative only.] (a)

Article 1.—Negotiable Papers, and how Transferred.

CHAPTER VII.

OF BILLS OF EXCHANGE, AND PROMISSORY NOTES, AND
OTHER NEGOTIABLE INSTRUMENTS.ARTICLE 1.—*Of Negotiable Papers, and how Transferred.*ARTICLE 2.—*Of Indorsers, Notice and Protest.*ARTICLE 3.—*Of the Rights of Holders.*ARTICLE 4.—*Of Damages.*

ARTICLE I.

OF NEGOTIABLE PAPERS, AND HOW TRANSFERRED.

SECTION.

2731. Bill of exchange.

2732. Promissory note.

2733. Negotiable.

2734. Bonds, etc., negotiable.

SECTION.

2735. Limited indorsement.

2736. Implied warranty.

2737. Bill, etc., payable out of a fund.

§ 2731. A bill of exchange is an order by one person, called the drawer or maker, to another, called the drawee or acceptor, to pay money to another (who may be the drawer himself), called the payee, or his order, or to the bearer. If the payee, or a bearer, transfers the bill by indorsement, he then becomes the indorser. If the drawer or drawee resides out of this State, it is then called a foreign bill of exchange.

Bill of exchange.

Parties.

§ 2732. A promissory note is a written promise made by one or more to pay to another, or order, or bearer, at a specified time, a specific amount of money, or other articles of value. If made by more than one, it may be a joint promise, or joint and several; in which case each is bound for the whole separately, at the option of the holder. If the payment is in articles other than money, and is not punctually made, the holder may recover the value of such articles at the time the note was due, at the place where it was payable, if a specific place is mentioned; otherwise, at the place where it was made, with lawful interest thereon.

Promissory note.

Payable in specifics.

§ 2733. A promissory note is negotiable by indorsement of the payee or holder, or, if payable to bearer, by transfer and delivery only. The maker may restrain the negotiability thereof by expressing such intention in the body of the instrument.

Negotiable.

Article 1.—Negotiable Papers, and how Transferred.

§ 2734. All bonds, specialties, or other contract in writing for the payment of money, or any article of property, and all judgments and executions from any Court in this State, are negotiable by indorsement, or written assignment, in the same manner as bills of exchange and promissory notes. No indorsement or assignment need be under seal.

§ 2735. Any person indorsing or transferring a negotiable instrument, may limit his own liability upon such indorsement or transfer by express restrictions therein; and the assignor of a judgment shall not be held liable as indorser, unless in such assignment he expressly contracts so to be.

§ 2736. Every transferrer of a negotiable instrument, whether by indorsement or delivery, warrants (unless otherwise agreed by the parties) that he is the lawful holder and has a right to sell, that the instrument is genuine, and that he has no knowledge of any fact which proves the instrument to be worthless, either by insolvency of the maker, payment, or otherwise.

§ 2737. An acceptance of a bill or order may be conditioned or payable out of a certain fund; and in all cases the acceptor shall have a lien on the funds or property of the drawer in his hands, for the payment of the acceptances in his behalf.*

ARTICLE II.

OF INDORSERS, NOTICE AND PROTEST.

- SECTION.
- 2738. Contract of indorser.
 - 2739. Protest and notice.
 - 2740. Indorser sued with maker.

- SECTION.
- 2741. Holidays excepted.
 - 2742. Days of grace.

§ 2738. In ordinary indorsements, the contract of the indorser is to pay the money, if the parties to the instrument primarily liable thereon fail to pay according to the terms thereof; hence, if there are several indorsers, each is liable to subsequent ones in the order of their indorsements.

§ 2739. When bills of exchange and promissory notes are made for the purpose of negotiation, or intended to be negotiated at any chartered bank, and the same are not paid at maturity, notice

* As to acceptances based on cotton, see Act of 1859, pp. 61-2.

Article 2.—Indorsers, Notice and Protest.

of the non-payment thereof, and of the protest of the same for non-payment, or non-acceptance, must be given to the indorsers thereon within a reasonable time, either personally or by post (if the residence of the indorser be known), or the indorser will not be held liable thereon; but in no other case, and upon no other bills or notes, shall notice or protest be held necessary to charge the indorser.

§ 2740. In all cases, the indorser may be sued in the same action, and in the same County, with the maker, or drawer, or acceptor. Indorser sued with maker.

§ 2741. The first day of January, the twenty-fifth day of December, and any day appointed by the Governor of this State, or the President of the United States, or the civil authorities of any city, as a day of fast and thanksgiving, shall be held and considered in the same manner as the first day of the week, known as Sunday, for all purposes connected with the presenting for judgment or acceptance, and protesting and giving notice of dishonor of any bill, check, order, or note. Holidays excepted.

§ 2742. The three days generally known as days of grace, and by custom allowed on papers payable at banks or brokers' offices, shall not be allowed upon any bill or draft payable at sight. Days of grace.

ARTICLE III.

OF THE RIGHT OF HOLDERS.

SECTION.

- 2743. Right of *bona fide* holder.
- 2744. Overdue notice.
- 2745. Presumption of good faith.
- 2746. Holder of collaterals.

SECTION.

- 2747. Title not to be inquired into.
- 2748. What is notice.
- 2749. Bills payable on demand, etc.

§ 2743. The *bona fide* holder for value, of a bill, draft, or promissory note, or other negotiable instrument, who receives the same before it is due, and without notice of any defect or defense, shall be protected from any defenses set up by the maker, acceptor, or indorser, except the following: 1. *Non est factum*. 2. Gambling or immoral and illegal consideration. 3. Fraud in its procurement. Right of bona fide holder.

§ 2744. If the holder receives it after it is due, its non-payment at maturity is notice to him of dishonor, and he takes it subject to all the equities existing between the original parties there- Overdue notice.

Article 3.—The Right of Holders.

One of several. to; and if there be several notes constituting one transaction, but due at different times, the fact that one is overdue and unpaid shall be notice to the purchaser of all, to put him on his guard as to each.

Presumption of good faith. § 2745. The holder of a note is presumed to be such, *bona fide* and for value; if either fact is negatived by proof, the defendants are let in to all their defenses; such presumption is negatived by proof of any fraud in the procurement of the note.

Holder of collaterals. § 2746. The holder of a note as collateral security for a debt stands upon the same footing as a purchaser.

Title not to be inquired into. § 2747. The title of the holder of a note can not be inquired into, unless it is necessary for the protection of the defendant, or to let in the defense which he seeks to make.

What is notice. § 2748. Any circumstances which would place a prudent man upon his guard in purchasing negotiable paper, shall be sufficient to constitute notice to a purchaser of such paper before it is due.

Bills payable on demand, etc. § 2749. Bills, notes, or other paper payable on demand, are due immediately. When no time is specified for the payment of a bill or order, it is due as soon as presented and accepted.

ARTICLE IV.

OF DAMAGES.

SECTION.

2750. Damages on foreign bills.

SECTION.

2751. If out of the United States.

Damages on foreign bills. § 2750. If any bill of exchange, draft, or order, is made payable at any place out of this State, and within the United States, and the same is returned under protest for non-acceptance or non-payment, the holder thereof shall be entitled to recover of the drawer and endorsers in the first case, and the acceptor also in the latter case, in addition to the principal, interest, and protest fees, five per cent. on the principal, as damages for non-acceptance or non-payment.

If out of the United States. § 2751. If such bill, draft, or order, is payable at a place without the limits of the United States, the holder may recover ten per cent. damages, as above, for non-acceptance or non-payment.

Article 1.—Fire Insurance.

CHAPTER VIII.

OF CONTRACTS OF INSURANCE.

ARTICLE 1.—*Of Fire Insurance.*ARTICLE 2.—*Of Life Insurance.*ARTICLE 3.—*Of Marine Insurance.*ARTICLE 4.—*Of Mutual Insurance.*

ARTICLE I.

OF FIRE INSURANCE.

SECTION.

- 2752. Contract.
- 2753. Interest of assured.
- 2754. Insuring interest of another.
- 2755. Changing property.
- 2756. Construction.
- 2757. Loss—what is it.
- 2758. Loss unknown to parties.
- 2759. Diligence by assured.
- 2760. Application—good faith required.
- 2761. Misrepresentation.
- 2762. Concealment.
- 2763. Willful misrepresentation.

SECTION.

- 2764. Increasing risk.
- 2765. Alienation.
- 2766. Transfer to one of several.
- 2767. Partial sale.
- 2768. Transfer after loss.
- 2769. Or by operation of law.
- 2770. Second insurance.
- 2771. Prescribing regulations.
- 2772. Amount of recovery.
- 2773. Estimated value.
- 2774. Privilege of rebuilding, etc.
- 2775. Recovery back by insurer.

§ 2752. The contract of fire insurance is one whereby an individual, or company, in consideration of a premium paid, agrees to indemnify the assured against loss by fire to the property described in the policy, according to the terms and stipulations thereof. Such contract, to be binding, must be in writing; but delivery is not necessary if, in other respects, the contract is consummated. Contract.

§ 2753. To sustain any contract of insurance, it must appear that the assured has some interest in the property or event insured, and such as he represented himself to have. A slight or contingent interest is sufficient, whether legal or equitable, and several having different interests may unite in procuring one policy: so a husband or parent may insure the separate property of his wife or child, the recovery being held by him in trust for them; but a mere expectation of an interest is not insurable. Interest of assured.

§ 2754. If one undertakes to insure the interest of another, it must be done by his consent, or be subsequently ratified by him; Insuring interest of another.

Article 1.—Fire Insurance.

but an insurer may reinsure to protect himself against loss on his contract.

Changing property. § 2755. A policy of insurance may be made to cover property changing daily in its specific articles, as a stock of goods.

Construction. § 2756. The contract of insurance should be construed so as to carry out the true intention of the parties.

Loss—what it is. § 2757. A loss or injury may occur from fire without the actual burning of the articles or property, as a house blown up to stop a conflagration, or goods removed in imminent danger, or damaged by water used to extinguish the flames.

Loss unknown to the parties. § 2758. If the loss has already occurred, and both parties are ignorant of it, the contract is valid; but the slightest grounds of suspicion known to the insured will vitiate the contract, unless made known to the insurer.

Diligence by assured. § 2759. The assured is bound to ordinary diligence in protecting the property from fire, and gross negligence on his part will relieve the insurer. Simple negligence by a servant, or the assured, unaffected by fraud or design in the latter, will not relieve the insurer.

Application—good faith. § 2760. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicant. Any variation by which the nature, or extent, or character of the risk is changed, will void the policy.

Misrepresentation. § 2761. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If, however, the party has no knowledge, but states on the representation of others, *bona fide*, and so informs the insurer, the falsity of the information does not void the policy.

Concealment. § 2762. A failure to state a material fact, if not done fraudulently, does not void; but the willful concealment of such a fact, which would enhance the risk, will void the policy.

Increasing risk. § 2763. Any change in the property, or the use to which it is applied, without the consent of the insurer, whereby the risk is increased, voids the policy.

Willful misrepresentation. § 2764. Willful misrepresentation by the assured, or his agent, as to the interest of the assured, or as to other insurance, or as to any other material inquiry made, will void the policy.

§ 2765. An alienation of the property insured, and a transfer

Article 1.—Fire Insurance.

of the policy, without the consent of the insurer, voids it; but the mere hypothecation of the policy, or creating a lien on the property, does not void. Alienation.

§ 2766. A policy issuing to several, may be transferred to one of the assured without the consent of the insurer. Transfer to one of several.

§ 2767. A partial sale of property insured, voids the policy only *pro tanto*. A sale not fully executed, and possession remaining with the assured, does not void. Partial sale.

§ 2768. After the loss occurs, a sale of the property and transfer of the policy does not affect the liability of the insurer, but the assignee may recover. Transfer after loss.

§ 2769. A transfer of the property or policy by operation of law, or under the order of the Court, will confer on the assignee all the rights of the assured. Or by operation of law.

§ 2770. A second insurance on the same property, unless by consent of the insurer, voids his policy. Second insurance.

§ 2771. Every insurer has a right to prescribe regulations as to notice and preliminary proof of loss, which must be substantially complied with by the assured, *provided* the same are made known at the time of insurance, and are not materially changed during the existence of the contract. An absolute refusal to pay waives a compliance with these preliminaries. Prescribing regulations.

§ 2772. The assured may recover the full amount of his loss, *provided* the same is within the amount insured. If he has several policies on the same property, the recovery from each company will be *pro rata* as to the amount insured. Amount of recovery.

§ 2773. The value of property is to be estimated at the time of the loss. Contingent profits are not a part of such value. Estimated value.

§ 2774. The privilege of rebuilding or reinstating the property must be reserved in the policy, or it does not exist. In such cases, the assured has no claim for rents, if done within a reasonable time, nor the insurer for increased value, from the fact of new and more valuable materials. Privilege of rebuilding.

§ 2775. If, after payment of loss, the insurer discovers evidence to show himself not liable on the policy, he may recover back the money in an action for money had and received. Recovery back by insurer.

Article 2.—Life Insurance.

ARTICLE II.

OF LIFE INSURANCE.

SECTION.

- 2776. Contract.
- 2777. By whom taken.
- 2778. To whom to be paid.

SECTION.

- 2779. Principles of fire insurance, etc.
- 2780. Self-caused death releases.
- 2781. Time—how counted.

Contract. § 2776. An insurance upon life is a contract by which the insurer, for a stipulated sum, engages to pay a certain amount of money if another dies within the time limited by the policy. The life may be that of the assured, or of another in whose continuance the assured has an interest.

By whom taken. § 2777. Contracts of life insurance can be taken only by persons or corporations specially authorized so to do by law.

To whom to be paid. § 2778. The assured may direct the money to be paid to his personal representatives, or to his widow, or to his children, or to his assignee; and upon such direction given and assented to by the insurer, no other person can defeat the same. But the assignment is good without such assent.

Fire insurance applicable. § 2779. The principles before stated as to fire insurance, wherever applicable, are equally the law of life insurance.

Self-caused death releases. § 2780. Death by suicide, or by the hands of justice, either punitive or preventive, releases the insurer from the obligation of his contract.

Fines—how counted. § 2781. A policy of life insurance runs from midday of the date of the policy, and the time must be estimated accordingly, if the policy is limited to a specified number of years.

ARTICLE III.

OF MARINE INSURANCE.

SECTION.

- 2782. Contract.
- 2783. Unlawful commerce.
- 2784. Double insurance.
- 2785. Implied warranty.
- 2786. Illegal voyage.
- 2787. Donation.

SECTION.

- 2788. Perils of the sea.
- 2789. Continuance of risk.
- 2790. Increase of risk.
- 2791. Open policy.
- 2792. Value—how ascertained.
- 2793. Former rules applicable.

Contract. § 2782. A contract of marine insurance is one by which a person or corporation, for a stipulated premium, insures another against losses occurring by the casualties of the sea.

Article 3.—Marine Insurance.

§ 2783. Prohibited or illegal commerce, or commerce with an enemy, or goods contraband of war, are not the subject of marine insurance. Unlawful commerce.

§ 2784. Double marine insurance may be obtained by a party having an insurable interest; but in case of loss, he can recover from both companies only the full value of such interest. If one underwriter pays the whole amount, he is entitled to contribution from the others. Double insurance.

§ 2785. The assured impliedly warrants that the ship is seaworthy, and shall not be changed except from necessity, and that she shall be employed, conducted, and navigated, with reasonable skill and according to law. Implied warranty.

§ 2786. The illegality of the voyage, whether known to the assured or not, renders the contract void. Illegal voyage.

§ 2787. A deviation from the voyage, if voluntary, and not from necessity, voids the policy. This necessity may arise from—
1. Stress of weather. 2. Want of necessary repairs. 3. Joining convey. 4. Succoring ships in distress. 5. Avoiding capture or detention. 6. Sickness of master or crew. 7. Mutiny on board. 8. Any similar cause founded upon reason. Deviation.

§ 2788. The “perils of the sea” comprehend all those misfortunes to which goods and ships at sea are exposed from earth, air, fire, or water. Loss from enemies is not included, unless expressly named. The negligence or unskillfulness of masters or mariners is not included in a policy on the ships or goods belonging to the owners of the vessel. If loss occurs to third persons therefrom, the underwriter may recover from the owner of the ship the amount paid by him. Perils of the sea.

§ 2789. Generally the risk continues till the goods are delivered on shore at the port of destination, or to others by direction of the assured. Continuance of risk.

§ 2790. Any change by which the risk is increased voids the policy. Increase of risk.

§ 2791. An open policy is where the amount of the interest of the assured is not fixed by the policy, but is left to be adjusted in case of loss; such policies may issue in blank to be filled by the insured as new risks may be desired. Open policy.

§ 2792. The value stated in a policy is always subject to be reduced by proof. Value—how ascertained.

§ 2793. The rules as to warranties, misrepresentations and concealments, are the same in marine as in fire insurance. Former rules applicable.

ARTICLE IV.

OF MUTUAL INSURANCE.

SECTION.

2794. Contract.
2795. By-laws.
2796. Officers agents of all.

SECTION.

2797. Liability for reducing funds.
2798. Stricter good faith.
2799. Agents of foreign companies.

Contract.

§ 2794. The contract of insurance is sometimes upon the idea of mutuality, by which each of the assured becomes one of the insurers, thereby becoming interested in the profits, and liable for the losses ; without a charter, such an organization would be governed by the general law of partnership ; when incorporated, they are subject to the terms of their charter.

By-laws.

§ 2795. The rules and regulations of such a company, adopted in pursuance of the charter, become a part of each policy, and all the assured are presumed to have notice thereof. But new conditions can not be annexed to the policy after it is issued, except by the consent of the assured.

Officers agents of all.

§ 2796. The officers of such a company are the agents of all the assured, and to the extent of their misconduct or neglect, shall affect each, upon the general principles governing principal and agent, except as to the transaction of making the contract of insurance ; up to the time of its execution, the assured stands as a third party, and the officer issuing the policy acts for those already in the company.

Liability for reducing funds.

§ 2797. If a mutual insurance company, by dividends, reduces its available funds below the point of remaining able to meet all losses occuring on policies then in existence, the directors of such company primarily, and the parties receiving the dividends, ultimately and *pro rata*, shall be liable individually, jointly and severally, for the amount of such unpaid losses.

Stricter good faith.

§ 2798. A stricter good faith, as to representations and concealments, should be required in mutual insurances than in any other similar contracts.

Agencies of foreign companies.

§ 2799. Agents of all foreign insurance companies must obtain a license before taking insurance in this State, under the penalties and in accordance with the provisions of this Code.

Article 1.—Denial of the Contract.

CHAPTER IX.

OF DEFENSES TO CONTRACTS.

ARTICLE 1.—*Denial of the Contract.*ARTICLE 2.—*Denial of its Obligation, etc.*ARTICLE 3.—*Payment and Herein of Appropriation of Payments.*ARTICLE 4.—*Performance and Herein of Tender.*ARTICLE 5.—*Accord and Satisfaction.*ARTICLE 6.—*Arbitrament and Award.*ARTICLE 7.—*Pendency of Another Suit, etc.*ARTICLE 8.—*Set-off and Recoupment.*ARTICLE 9.—*Limitation of Actions.*

ARTICLE I.

DENIAL OF THE CONTRACT.

SECTION.

2800. *Non est factum.*

2801. Effect of alteration.

2802. By whom tried.

SECTION.

2803. Preliminary proof.

2804. Indorsement, etc.

§ 2800. A party may deny the original execution of the contract sought to be enforced, or its existence in the shape then subsisting. In either event, if the contract be in writing and so declared upon, the denial must be on oath and filed at the first term after service is perfected. *Non est factum.*

§ 2801. If a written contract be altered intentionally, and in a material part thereof, by a person claiming a benefit under it, with intent to defraud the other party, such alteration voids the whole contract, at the option of the other party. If the alteration be unintentional, or by mistake, or in an immaterial matter, or not with intent to defraud, if the contract as originally executed can be discovered, and is still capable of execution, it will be enforced by the Court. If the alteration be made by a stranger, and not at the instance or by collusion of a party, or privy, if the original words can still be restored, the contract will be enforced. *Effect of alteration.*

§ 2802. The materiality of an alteration is a question of law. The fact of an alteration is a question for the jury. *By whom tried.*

Article 2.—Denial of the Obligation of a Contract, etc.

Preliminary proof. § 2803. If the contract is not set forth as the basis of the action, so as to require a denial on oath, an alteration in a material part requires explanation before it can be admitted as evidence. This preliminary proof is submitted to the Court.

Indorsement, etc., not to be proved. § 2804. An indorsement or assignment of any bill, bond, or note, when the same is sued by the indorsee, need not be proved, unless denied on oath.

ARTICLE II.

DENIAL OF THE OBLIGATION OF A CONTRACT, EITHER ORIGINALLY OR BY SUBSEQUENT ACT OF THE OPPOSITE PARTY.

SECTION.

- 2805. Denial of obligation.
- 2806. Conditions.
- 2807. Dependent covenants.
- 2808. Rescission.

SECTION.

- 2809. Without consent.
- 2810. Covenant not to sue.
- 2811. Release.
- 2812. Intermarriage.

Denial of obligation. § 2805. Any fact going to show that the original contract was not obligatory, though executed, may be set up as a defense.

Conditions. § 2806. A condition, precedent or subsequent, not complied with, want or failure of consideration, or any act of the opposite party by which the obligation of the contract has ceased, may be pleaded as a defense.

Dependent covenants. § 2807. Where covenants are dependent, the failure of performance by the opposing party may be a good defense.

Rescission. § 2808. A rescission of the contract by consent, or a release by the other contracting party, is a complete defense.

Without consent. § 2809. In some cases, a party may rescind without the consent of the opposite party, for non-performance by him of his covenants; but this can be done only when both parties can be restored to the condition in which they were before the contract was made.

Covenant not to sue. § 2810. A covenant never to sue is equivalent to a release; so also a bond to indemnify the debtor against his own debt.

Release. § 2811. A release sometimes results as an operation of law; as when a creditor releases another who is bound jointly with, or primarily to the debtor, or accepts from the debtor a higher security for the same debt not intended to be collateral thereto.

Intermarriage. § 2812. Intermarriage of the parties generally releases a debt, but such is not the effect when the bond or obligation is given in contemplation of marriage.

Article 3.—Payment and Herein of Appropriation of Payments.

ARTICLE III.

OF PAYMENT AND HEREIN OF APPROPRIATION OF PAYMENTS.

SECTION.

2813. Payment generally.

2814. To naked trustee.

2815. By post.

SECTION.

2816. Bank bills.

2817. Stakeholder.

2818. Appropriation of payments.

§ 2813. Payment of money due, to the creditor or his authorized or general agent, or one whom the creditor accredits as agent, though he may not be so, or to his partner interested with him in the money, shall be good; and if such agent receives property other than money as money, the creditor is bound thereby. Payment generally.

§ 2814. Payment to a nominal party, or a naked trustee, without authority to receive, if made collusively and with intention to defeat the true owner, shall have no effect. To naked trustee.

§ 2815. Payment by post is at the risk of the sender, unless done by direction, either express or implied, of the creditor or his agent. By post.

§ 2816. Bank bills, if received in payment, are warranted by the payer to be genuine, and that as far as he knows the bank is solvent. Bank checks and promissory notes are not payment until themselves paid. Bank bills, checks, and notes.

§ 2817. A stakeholder of money risked on a wager is bound to repay to the party depositing, at any time he may demand it, before it is actually paid over to the winner; but if paid over to the winner *bona fide*, and without notice of the depositor's intention to retract, this payment is a protection. Stakeholder.

§ 2818. When a payment is made by a debtor to a creditor holding several demands against him, the debtor has the right to direct the claim to which it shall be appropriated. If he fails to do so, the creditor has the right to appropriate at his election. If neither exercises this privilege, the law will direct the application in such manner as is reasonable and equitable, both as to parties and third persons. As a general rule, the oldest lien and the oldest item in an account will be first paid, the presumption of law being that such would be the fair intention of the parties. Appropriation of payments.

Payment intended as a credit on a note.
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Article 4.—Performance and Herein of Tender.

ARTICLE IV.

OF PERFORMANCE AND HEREIN OF TENDER.

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- 2819. Performance.
- 2820. Impossibility of performance.
- 2821. Part performance.
- 2822. Fault of other party.

SECTION.

- 2823. Tender.
- 2824. Of specific articles.
- 2825. Reasonable demand.
- 2826. Effect of tender.

Performance.

§ 2819. Performance, to be effectual, must be by the party bound to perform, or his agent, (where personal skill is not required) or some one substituted, by consent, in his place. It must be a substantial compliance with the spirit, and not the letter only, of the contract, and done within a reasonable time.

Impossibility of performance.

§ 2820. If such a performance is impossible, and becomes so by the act of God, such impossibility is itself a defense equivalent to performance; but if by proper prudence such impossibility might have been avoided by the promiser, it ceases to be an excuse for non-performance.

Part performances.

§ 2821. In a severable contract, or one admitting of apportionment, a part performance may be a defense *pro tanto*.

Fault of other party.

§ 2822. If the non-performance is caused by the act or fault of the opposite party, that excuses the other party from performance.

Tender.

§ 2823. A tender properly made may be equivalent to performance; if in money, the coin need not be actually presented, unless demanded: it must be certain and unconditional, except for a receipt in full or delivery of the obligation, and may be made by an agent or friend, and to an agent authorized to receive. It must be in full of the specific debt, and not in part, and may be made at any time before final trial, and if sustained, no subsequent cost shall be paid by the defendant; if rejected, and not on any ground of informality, such informality can not be afterward urged in objection to the tender.

Of specific articles.

§ 2824. A tender of specific articles must be such as to enable the party to whom tendered to take immediate possession, and at the time and place agreed on in the contract. If no place is agreed on, they must be carried to the person entitled to them, if residing within this State, unless, from the nature of the articles, or the contract, another place of delivery be inferred. If the articles be cumbrous, the deliverer may demand of the receiver

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Article 5.—Accord and Satisfaction.

to appoint a convenient place of delivery, and on failure to do so the tender shall be considered complete.

§ 2825. If the promise be to deliver on demand, the demand must be reasonable as to time, place, and manner; if the promise be to deliver at a certain time and place, a tender at the time and place is good, though the receiver is not present.

Reasonable demand.

Tender at place.

§ 2826. A valid tender of chattels transfers the title thereto to the person bound to receive, and the possession of the promiser, if he retains possession from that time, is for the benefit of the owner, but without liability to account for profits, or for more than ordinary prudence in their preservation and protection.

Effect of tender.

ARTICLE V.

ACCORD AND SATISFACTION.

SECTION.

2827. What is accord and satisfaction,

2828. When an extinguishment.

2829. Must be of benefit to creditor.

SECTION.

2830. Less than debt is not.

2831. Compromise.

§ 2827. Accord and satisfaction is where the parties, by a subsequent agreement, have satisfied the former one, and the latter agreement has been executed. The execution of a new agreement may itself amount to a satisfaction, where it is so expressly agreed by the parties, and without such agreement, if the new promise is founded on a new consideration—the taking of it is a satisfaction of the former contract.

What is accord and satisfaction.

§ 2828. An accord and satisfaction may not amount to an extinguishment of the original debt, but may extend only to suspend the execution or collection thereof for a limited time; in the meantime an action can not be sustained.

When an extinguishment.

§ 2829. The accord and satisfaction must be of some advantage, legal or equitable, to the creditor, or it will not have the effect of barring him from his legal rights. The acknowledgment of a disputed title, or the securing of a doubtful claim, would be such an advantage.

Must be of benefit to creditor.

§ 2830. An agreement by a creditor to receive less than the amount of his debt, can not be pleaded as an accord and satisfaction, unless it be actually executed by the payment of the money,

Less than debt is not.

Article 6.—Arbitrament and Award.

or the giving of additional security, or the substitution of another debtor, or some other new consideration.

§ 2831. A compromise, or mutual accord and satisfaction, is ~~Compromise~~ binding on the parties.

ARTICLE VI.

ARBITRAMENT AND AWARD.

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- 2832. What is.
- 2833. Trustees may submit.
- 2834. Of the submission.
- 2835. Arbitrators limited by authority.
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- 2837. Award.

SECTION.

- 2838. May be valid in part only.
- 2839. Awarded by umpire.
- 2840. Reference *pendente lite*.
- 2841. Setting aside an award.
- 2842. Fraud.

What is. § 2832. Parties disagreeing as to their rights or liabilities may submit the matter to third persons to decide, and the award made by such arbitrators is binding on the persons submitting.

Trustees may submit. § 2833. Guardians, trustees, executors, or administrators, may, in good faith and with proper prudence, submit to arbitration the matters in controversy in connection with the estate they represent.

Of the submission. § 2834. A submission may be in parol, and the award also be verbal, when the matters in dispute do not exceed in value the sum of five hundred dollars; but all submissions by persons acting as trustees, as above, must be in writing, and the award rendered in writing.

Arbitrators limited by authority. § 2835. Arbitrators should not exceed their authority, and the award should cover all matters submitted, and should be rendered in accordance with the terms of the submission. If the award covers too much, and the excessive part can be separated from the other, that which is good shall remain valid.

General submission. § 2836. Under a general submission, the arbitrators are bound to decide only those matters brought to their consideration by the parties.

Award. § 2837. The award must be certain and final, although it may be in the alternative. It must be possible and reasonable, and must be made by the arbitrators themselves, or the umpire provided for in the submission, and not by other persons.

May be valid in part only. § 2838. If an award be defective in part, that which is valid, if capable of separation, shall stand.

Article 7.—Pendency of Another Action and Former Recovery.

§ 2839. If an umpire be provided for in the submission, an award by him alone, or jointly with the arbitrators, will be good. Award by umpire.

§ 2840. Pending litigation may be referred to arbitration, under an order of Court, by consent of parties, and the award, when rendered, may be made the judgment of the Court. Reference pendente lite.

§ 2841. To sustain an award, no unfair advantage should be given to either party in the hearing of the case or the rendering of the award. A palpable mistake of law, or a reference of any matter to chance or lot, would vitiate an award. Setting aside an award.

§ 2842. Fraud in the arbitrators, or in either party in obtaining an award, would set it aside. Fraud.

ARTICLE VII.

OF PENDENCY OF ANOTHER ACTION AND FORMER RECOVERY.

SECTION.

2843. Plaintiff required to elect.
2844. Attachment excepted.
2845. Suits by informers.

SECTION.

2846. Former judgment.
2847. Parol evidence admissible.

§ 2843. No suitor is entitled to prosecute two actions in the Courts of this State at the same time, for the same cause and against the same party, and in such a case the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously; and the pendency of the former is a good defense to the latter, if commenced at different times. Plaintiff required to elect.

§ 2844. This rule does not apply to a prior attachment against property where the defendant is subsequently served personally, nor to an attachment sued out *pendente lite*; but the judgment in the case against the person must set out the fact of its identity with the proceedings against the property. Attachment excepted.

§ 2845. In suits by informers, the first filed in office has precedence for the same cause of action, and the latter must abate. Suits by informers.

§ 2846. An adjudication of the same subject-matter in issue in a former suit between the same parties, by a Court of competent jurisdiction, should be an end of litigation. Former judgment.

§ 2847. Parol evidence is admissible to show that a matter apparently covered by the judgment was really not passed upon by the Court. Parol evidence admissible.

Article 8.—Set-off and Recoupment.

ARTICLE VIII.

OF SET-OFF AND RECOUPMENT.

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2848. Set-off.
 2849. What may be.
 2850. Mutual debt.
 2851. Judgments.
 2852. Set-off against *cestui que trust*.
 2853. Set-off against negotiable note.
 2854. Against testator or intestate.

SECTION.

2855. Valuable improvements.
 2856. Effect of dismissal.
 2857. Debts not due.
 2858. Recoupment.
 2859. Difference from set-off.
 2860. For what it lies.
 2861. When it lies.

§ 2848. Set-off is a defense which goes not to the justice of plaintiff's demand, but sets up a demand against the plaintiff to counterbalance his in whole or in part.

§ 2849. Between the parties themselves any mutual demands existing at the time of the commencement of the suit may be set off.

§ 2850. Set-off must be between the same parties and in their own right. If originally otherwise, but at the commencement of suit equitably within this rule, they may be set off. Thus, a claim against a partnership may be set off against a surviving partner in a suit brought in his own right; and a debt due to principal may be set off in a suit against principal and surety.

§ 2851. Judgments in the same Court may be set off against each other on motion, the balance on the larger being collectable under execution. The rights of an assignee shall not be interfered with if *bona fide* and for value.

§ 2852. If the plaintiff sues for the benefit of another person, a set-off against the beneficiary shall be allowed.

§ 2853. When a negotiable paper is sued by a holder or endorsee, received under dishonor, no set-off is allowed against the original payee, except such as is in some way connected with the debt sued on, or the transaction out of which it sprung.

§ 2854. A debt of a testator or intestate is not a proper set-off against a debt contracted with the representative of the estate. But it is otherwise if both were contracted during the lifetime of the decedent.

§ 2855. Against a claim for mesne profits, the value of improvements made by one *bona fide* in possession under a claim of right, is a proper subject-matter of set-off.

§ 2856. After a plea of set-off is filed, the plaintiff may not dismiss his action so as to interfere with said plea, unless by leave

Section 1.—Periods of Limitation.

of the Court on sufficient cause shown, and on terms prescribed by the Court.

§ 2857. If a plaintiff resides without this State, or is insolvent, the defendants may set off against him a debt not due, under such equitable terms as may be prescribed by the Court. Debts not due.

§ 2858. Recoupment is a right of the defendant to have a deduction from the amount of the plaintiff's damages, for the reason that the plaintiff has not complied with the cross obligations or independant covenants arising under the same contract. Recoupment

§ 2859. It differs from a set-off in this: The former is confined to the contract on which plaintiff sues, while the latter includes all mutual debts and liabilities. Difference from set-off.

§ 2860. Recoupment lies for overpayments by defendant, or payments by fraud, accident, or mistake. For what it lies.

§ 2861. Recoupment may be pleaded in all actions *ex contractu*, where, from any reason, the plaintiff under the same contract is in good conscience liable to defendant.* Where it lies.

ARTICLE IX.

LIMITATION OF ACTIONS ON CONTRACTS. 389a 300

SECTION 1.—*Periods of Limitation.*

SECTION 2.—*Exceptions and Disabilities.*

SECTION 3.—*New Promise.*

SECTION I.

PERIODS OF LIMITATION.

SECTION.

- 2862. On foreign judgments.
- 2863. Domestic judgments.
- 2864. On specialties.
- 2865. Statutory rights.
- 2866. Simple contracts.
- 2867. Open accounts.
- 2868. Bills of review and for new trial.

SECTION.

- 2869. Certiorari.
- 2870. Writs of error.
- 2871. Executors, administrators, etc.
- 2872. Other actions *ex contractu*.
- 2873. Good in equity.
- 2874. Suits by informers.

§ 2862. All suits upon judgments obtained out of this State shall be brought within five years after such judgment is obtained. On foreign judgment.

* For further provisions as to set-off and recoupment, see Part 3, Title 3, Chapter 1.

Section 1.—Periods of Limitation.

§ 2863. No judgment hereafter obtained in the Courts of this State shall be enforced after the expiration of seven years from the time of its rendition, when no execution has been issued upon it; or when execution has been issued, and seven years have expired from the time of the last entry upon the execution, made by an officer authorized to execute and return the same: such judgments may be revived by *scire facias*, or be sued on within three years from the time they become dormant.

§ 2864. Actions upon bonds or other instruments under seal, shall be brought within twenty years after the right of action accrues—but no instrument shall be considered under seal, unless so recited in the body of the instrument.

§ 2865. All suits for the enforcement of rights accruing to individuals under statutes, acts of incorporation, or by operation of law, shall be brought within twenty years after the right of action accrues.

§ 2866. All actions upon promissory notes, bills of exchange, or other simple contract in writing, shall be brought within six years after the same becomes due and payable.

§ 2867. All actions upon open account, or for the breach of any contract not under the hand of the party sought to be charged, or upon any implied assumpsit or undertaking, shall be brought within four years after the right of action accrues.

§ 2868. All bills of review or for a new trial, in a Court of Equity (unless the latter be founded on proof of perjury in a material witness for the successful party), shall be brought within three years after such a decree or judgment has been rendered.

§ 2869. All writs of certiorari shall be allowed and brought within three months after the rendition of the judgment sought to be reversed.

§ 2870. All writs of error must be sued out within thirty days from the adjournment of the Court where the decision complained of was made, or if made at chambers, from the time of the decision.

§ 2871. All actions against executors, administrators, guardians, or trustees, except on their bonds, must be brought within ten years after the right of action accrues.

§ 2872. All other actions upon contracts, express or implied, not hereinbefore provided for, must be brought within four years from the accrual of the right of action.

Section 2.—Exceptions and Disabilities.

§ 2873. The limitations herein provided, apply equally to Courts of Law and Equity; and in addition to the above, Courts of Equity may interpose an equitable bar, in accordance with the established rules of such Courts, whenever, from the lapse of time and laches of the complainant it would be inequitable to allow a party to enforce his legal rights. Good in Equity.

§ 2874. All actions by informers to recover any fine, forfeiture, or penalty, shall be commenced within one year from the time the defendant's liability thereto was discovered, or by reasonable diligence could have been discovered. Suits by informers.

SECTION II.

EXCEPTIONS AND DISABILITIES.

SECTION.

- 2875. Persons excepted.
- 2876. Occuring after accrual of right.
- 2877. Unrepresented estate.
- 2878. Absence from State of defendant.

SECTION.

- 2879. Joint action and a part barred.
- 2880. Fraud.
- 2881. Non-suit or dismissal.
- 2882. If pleaded as set-off.

§ 2875. Married women, infants, idiots, or insane persons, or persons imprisoned, who are such when the cause of action accrues, shall be entitled to the same time, after the disability is removed, to bring an action, as is prescribed in this Code for other persons. Persons excepted.

§ 2876. If either of the foregoing disabilities happens after the right of action accrues, and is not voluntarily caused or undertaken by the person claiming the benefit thereof, the limitation shall cease to operate during its continuance. Occurring after accrual of right.

§ 2877. The time occurring between the death of a person and representation taken upon his estate, or between the termination of one administration and the commencement of another, shall not be counted against his estate, *provided* such time does not exceed five years; but at the expiration of that time, the limitation shall commence, though the cause of action accrued after his death. Unrepresented estate.

§ 2878. If the defendant, in any of the cases herein named, shall remove from this State, the time of his absence from the State, and until he returns to reside, shall not be counted or estimated in his favor. Absence from State of defendant.

Section 3.—New Promise.

Joint action and a part barred. § 2879. If there is a joint right of action, and some of the persons having such right are under any of the foregoing disabilities, the terms mentioned herein shall not be computed against such joint action, until all the disabilities are removed; but if the action might be severed, and each sue for his own share, those free from disability shall be barred, and the rights of those only protected who are under such disability.

Fraud. § 2880. If the defendant, or those under whom he claims, has been guilty of a fraud by which the plaintiff has been debarred or deterred from his action, the period of limitation shall run only from the time of the discovery of the fraud.

Non-suit or dismissal. § 2881. If a plaintiff shall be non-suited, or shall discontinue or dismiss his case, and shall recommence within six months, such renewed case shall stand upon the same footing, as to limitation, with the original case; but this privilege of dismissal and renewal shall be exercised only once under this clause.

If pleaded as set-off. § 2882. Where any matter has been pleaded as a set-off in a suit, and the suit is dismissed, or the case is otherwise disposed of without a hearing upon the merits of the set-off, such set-off shall not be barred until the expiration of six months next after the time of such disposition of such suit.

SECTION III.

NEW PROMISE.

SECTION.

2883. Must be in writing.
2884. Credit on note.
2885. Effect of new promise.

SECTION.

2886. By partner.
2887. By joint contractor.

Must be in writing. § 2883. A new promise, in order to renew a right of action already barred, or to constitute a point from which the limitation shall commence running on a right of action not yet barred, must be in writing, either in the party's own handwriting, or subscribed by him, or some one authorized by him.

Credit on note. § 2884. A payment entered upon a written evidence of debt by the debtor, or any other written acknowledgment of the existing liability, is equivalent to a new promise to pay.

Effect of new promise. § 2885. A new promise revives or extends the original liability: it does not create a new one.

Chapter 10.—Breach and Damages.

§ 2886. After the dissolution of a partnership, a new promise By partner. by one partner revives or extends the partnership debt only as to himself, and not as to his co-partners.

§ 2887. In cases of joint or joint and several contracts, a new By joint contractor. promise by one of the contractors operates only against himself.

CHAPTER X.

OF BREACH AND DAMAGES.

SECTION.

- 2888. Breach of entire contract, etc.
- 2889. Liquidated damages.
- 2890. Penalties.
- 2891. Expense of litigation.
- 2892. Exemplary damages.
- 2893. Remote damages.

SECTION.

- 2894. Interest.
- 2895. Nominal damages.
- 2896. Discretion of jury.
- 2897. On covenants, etc.
- 2898. On bond for titles.
- 2899. Necessary expense.

§ 2888. If a contract be entire, but one suit can be maintained Breach of entire contract, etc. for a breach thereof; but if it be severable, or if the breaches occur at successive periods in an entire contract (as where money is to be paid by installments), an action will lie for each breach; but all the breaches occurring up to the commencement of the action, must be included therein. 21-157

§ 2889. Damages are given as compensation for the injury sustained. If the parties agree, in their contract, what the damages for a breach shall be, they are said to be liquidated, Liquidated damages. and unless the agreement violates some principle of law, the parties are bound thereby.

§ 2890. Penalties in bonds are not liquidated damages, and even Penalties. if called such, yet, if it appears unreasonable, and not so actually intended by the parties, the law will give only the actual damages; and in all cases where the damage is capable of computation, and is not uncertain in its character, such stipulations will be declared not to be penalties.

§ 2891. The expenses of litigation are not generally allowed as Expense of litigation. a part of the damages; but if the defendant has acted in bad faith, or has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them.

§ 2892. Exemplary damages can never be allowed in cases arising Exemplary damages. on contracts.

Chapter 10.—Breach and Damages.

Remote damages. § 2893. Remote or consequential damages are not allowed whenever they can not be traced solely to the breach of the contract, or unless they are capable of exact computation—such as the profits, which are the immediate fruit of the contract, and are independent of any collateral enterprise entered into in contemplation of the contract.

Interest. § 2894. In all cases where an amount ascertained would be the damages at the time of the breach, it may be increased by the addition of legal interest from that time till the recovery.

Nominal damages. § 2895. In every case of breach of contract, the other party has a right to damages; but if there has been no actual damage, the plaintiff can recover nominal damages which will carry the costs. But if the defendant, before suit is brought, or afterward, and before trial, tenders to the plaintiff as much or more than he finally recovers, no costs shall be recovered accruing subsequent to the tender.

Discretion of jury. § 2896. The question of damages being one for the jury, the Court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias.

On covenants of warranty to land. § 2897. Upon a covenant of warranty of title to land, the damages should be the purchase money, with interest thereon from the time of sale, unless the jury should think, under the circumstances of the case, that the use of the premises was equal to the interest on the money, and that such equitable set-off should be allowed. If valuable improvements have been made, the interest should be allowed.

On bond for titles. § 2898. Upon breach of a bond for title to land, the value of the premises at the time of the breach, with interest thereon, should be the measure of damages; but if the vendee has bought up the outstanding title, the actual damage sustained by him only can be recovered.

Necessary expense. § 2899. Any necessary expense which one of two contracting parties incurs, in complying with the contract, may be recovered as damages.

TITLE VIII.

OF TORTS, OR INJURIES TO PERSONS OR PROPERTY.

CHAPTER 1.—*General Principles and Herein of Fraud, etc.*CHAPTER 2.—*Of Injuries to the Person.*CHAPTER 3.—*Of Injuries to Property.*CHAPTER 4.—*Of Defenses.*CHAPTER 5.—*Of Damages.*

CHAPTER I.

GENERAL PRINCIPLES AND HEREIN OF FRAUD AND DECEIT.

SECTION.

- 2900. What are torts.
- 2901. Injury common to all.
- 2902. Failing in legal duty.
- 2903. Private duties.
- 2904. Election.
- 2905. Privity.
- 2906. Fraud and damage.
- 2907. Deceit.
- 2908. Letters to obtain credit.

SECTION.

- 2909. Torts to wife, etc.
- 2910. By wife, servant, etc.
- 2911. By employee.
- 2912. Ratification.
- 2913. Vicious animals.
- 2914. Dogs—liability of owner.
- 2915. Frauds by acts or silence.
- 2916. Action does not abate.

§ 2900. A tort is a legal wrong committed upon the person or property independent of contract. It may be either— What are torts.

1. A direct invasion of some legal right of the individual.
2. The infraction of some public duty by which special damage accrues to the individual.
3. The violation of some private obligation by which like damage accrues to the individual.

In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases such damage is necessary.

§ 2901. Injury in common with the community, though to a greater extent, will not give a right of action for the infraction of some public duty. It must be some special damage to the individual in which the public have not participated, although liable thereto. Injury common to all.

Chapter 1.—General Principles and Herein of Fraud and Deceit.

39 Gu 725.
Failing in
legal duty.

§ 2902. When the law requires one to do an act for the benefit of another, or to forbear the doing of that which may injure another, though no action be given in express terms, upon the accrual of damage the party may recover.

Private
duties.

§ 2903. Private duties may arise either from statute, or flow from relations created by contract, express or implied. The violation of any such specific duty, accompanied with damage, gives a right of action.

Elections.

§ 2904. When a transaction partakes of the nature both of a tort and a contract, the party complainant may waive the one and rely solely upon the other.

Privity.

§ 2905. No privity is necessary to support an action for a tort, but if the tort results from the violation of a duty itself, the consequence of a contract, the right of action is confined to the parties and privies to that contract, except in cases where the party would have had a right of action for the injury done, independent of the contract.

Fraud and
damage.

§ 2906. Fraud by one, accompanied with damage to the party defrauded, in all cases gives a right of action.

Deceit.

§ 2907. Willful misrepresentation of a material fact made to induce another to act, and upon which he does act to his injury, will give a right of action. Mere concealment of such a fact, unless done in such a manner as to deceive and mislead, will not support an action. In all cases of deceit, knowledge of the falsehood constitutes an essential element. A fraudulent or reckless representation of a fact as true, which the party may not know to be false, if intended to deceive, is equivalent to a knowledge of the falsehood.

Letters to
obtain credit

§ 2908. No action shall be sustained for deceit in representation to obtain credit for another, unless such misrepresentation be in writing, signed by the party to be charged therewith.

Torts to
wife, etc.

§ 2909. Every person may recover for torts committed to himself, or his wife, or his child, or his ward, or his servant.

By wife,
servant, etc.

§ 2910. Every person shall be liable for torts committed by his wife, and for torts committed by his child, or servant by his command, or in the prosecution and within the scope of his business, whether the same be by negligence or voluntary.

By em-
ployee.

§ 2911. The employer is not responsible for torts committed by his employee when the latter exercises an independent business,

Chapter 1.—General Principles and Herein of Fraud and Deceit.

and in it is not subject to the immediate direction and control of the employer.

§ 2912. By ratification of a tort committed for one's benefit, the ratifier becomes liable as if he commanded it; otherwise, if the act was done for the benefit of a third person. Ratification.

§ 2913. A person who owns or keeps a vicious or dangerous animal of any kind, and by the careless management of the same, or by allowing the same to go at liberty, another without fault on his part is injured thereby, such owner or keeper shall be liable in damages for such injury. Vicious animals.

§ 2914. [If any dog, not being at the time on the premises of the owner, possessor, or person having charge thereof, shall kill or injure any hogs, cattle, sheep, goats, or other live stock, the property of any other person, then and in such case the owner or person possessing or having such dog in charge shall be liable to be sued, in any Court having jurisdiction thereof, for such damages as may have been sustained by the killing or maiming of any hogs, cattle, sheep, goats, or other live stock so killed or injured, and full costs of suit.] (a) Dogs—owner liable for.

§ 2915. A fraud may be committed by acts as well as words; and one who silently stands by and permits another to purchase his property without disclosing his title is guilty of such a fraud as estops him from subsequently setting up such title against the purchaser. Frauds by acts or silence. 29a

§ 2916. No action for a tort shall abate by the death of either party where the wrong doer received any benefit from the tort complained of. Action does not abate.

CHAPTER II.

OF INJURIES TO THE PERSON.

ARTICLE 1.—*Physical Injuries.*

ARTICLE 2.—*Reputation.*

ARTICLE 3.—*Other Injuries to the Person.*

(a) Acts 1865-6, p. 76.

Article 1.—Physical Injuries.

ARTICLE I.

PHYSICAL INJURIES.

SECTION.

2917. Intention.

2918. What is a tort on a person.

2919. If a felony.

SECTION.

2920. Homicide of husband or father.

2921. Diligence of plaintiff.

2922. Malpractice of surgeon or physician

§ 2917. A physical injury done to another gives a right of action, whatever may be the intention of the actor, unless he is justified under some rule of law. The intention should be considered in the assessment of damages.

§ 2918. Any violent injury, or attempt to commit a physical injury illegally upon a person, is a tort for which damages may be recovered.

§ 2919. If the injury amounts to a felony, as defined by this Code, the person injured must either simultaneously, or concurrently, or previously, prosecute for the same, or allege a good excuse for the failure so to prosecute.

§ 2920. A widow, or if no widow, a child, or children, may recover for the homicide of the husband or parent; and if suit be brought by the widow or children, and the former or one of the latter dies pending the action, the same shall survive in the first case to the children, and in the latter case to the surviving child or children.

§ 2921. If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. But in other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

§ 2922. A person professing to practice surgery, or the administering of medicine for a compensation, must bring to the exercise of his profession a reasonable degree of care and skill. Any injury resulting from a want of such care and skill will be a tort for which a recovery may be had.

Section 1.—Libel and Slander.

ARTICLE II.

INJURIES TO REPUTATION.

SECTION 1.—*Libel and Slander.*SECTION 2.—*Malicious Prosecution.*

SECTION I.

OF LIBEL AND SLANDER.

SECTION.

2923. Libel.
2924. Malice.
2925. Publication.
2926. Slander.

SECTION.

2927. Charge of adultery with negro.
2928. Truth.
2929. Privileged communications.
2930. Malicious use of.

§ 2923. A libel is a false and malicious defamation of another expressed in print, or writing, or pictures, or signs, tending to injure the reputation of an individual, and exposing him to public hatred, contempt, or ridicule. The publication of the libelous matter is essential to a recovery.

Libel.

§ 2924. In all actions for printed or spoken defamation, malice is inferred from the character of the charge. The existence of malice may be rebutted by proof, which in all cases will go in mitigation of damages, and in cases of privileged communications, will be in bar of the recovery.

Malice.

§ 2925. A libel is published so soon as it is communicated to any person other than the party libeled.

Publication.

§ 2926. Slander, or oral defamation, consists—first, in imputing to another a crime punishable by law; or, second, charging him with having some contagious disorder, or being guilty of some debasing act which may exclude him from society; or, third, in charges made on another in reference to his trade, office, or profession calculated to injure him therein; or, fourth, any disparaging words productive of special damage flowing naturally therefrom. In the latter case, the special damage is essential to support the action; in the three former, damage is inferred.

Slander.

§ 2927. Any charge or intimation against a free white female of having sexual intercourse with a person of color, is slanderous without proof of special damage.

Charge of
intercourse
with a per-
son of color.

Section 2.—Malicious Prosecution.

Truth. § 2928. The truth of the charge made may always be proved in justification of the libel or slander.

§ 2929. The following are deemed privileged communications :

Privileged
communications.

1. Statements made *bona fide* in the performance of a public duty.

2. Similar statements in the performance of a private duty, either legal or moral.

3. Statements made with the *bona fide* intent, on the part of the speaker, to protect his own interest in a matter where it is concerned.

4. Fair and honest reports of the proceedings of legislative or judicial bodies.

5. Comments of counsel, fairly made, on the circumstances of his case, and the conduct of parties in connection therewith.

6. Comments upon the acts of public men, in their public capacity, and with reference thereto.

Malicious
use of.

§ 2930. In every case of privileged communications, if the privilege is used merely as a cloak for venting private malice, and not *bona fide* in promotion of the object for which the privilege is granted, the party defamed has a right of action.

SECTION II.

MALICIOUS PROSECUTION.

SECTION.

2931. Malicious prosecution.

2932. Probable cause.

2933. Evidence of prosecutor.

2934. Grand Jurors exempt.

SECTION.

2935. Measure of damages.

2936. Malice inferred.

2937. What is a prosecution.

2938. When the right accrues.

Malicious
prosecution.

§ 2931. A criminal prosecution, maliciously carried on, and without any probable cause whereby damage ensues to the person prosecuted, gives him a cause of action.

Probable
cause.

§ 2932. Want of probable cause shall be a question for the jury, under the direction of the Court, and shall exist when the circumstances are such as to satisfy a reasonable man that the accuser had no ground for proceeding but his desire to injure the accused.

Evidence of
prosecutor.

§ 2933. In investigating the question of probable cause, the evidence given by the prosecutor himself upon the criminal prose-

Section 1.—False Imprisonment.

cution, may be submitted to the jury by either party, the credibility thereof to be determined by them.

§ 2934. No member of a Grand Jury is liable to an action for a malicious prosecution upon a presentment made by the body; but if such presentment is made at the instigation of a third person, from malice on his part, and without probable cause, he shall be liable as if he was named as prosecutor.

Grand Jurors exempt.

Instigator.

§ 2935. The recovery shall not be confined to the actual damage sustained by the accused, but shall be regulated by the circumstances of each case.

Measure of damages.

§ 2936. A total want of probable cause is a circumstance from which malice may be inferred, but such inference may be rebutted by proof.

Malice inferred.

§ 2937. An inquiry before a committing Court, or Justice of the Peace, amounts to a prosecution.

What is a prosecution.

§ 2938. The prosecution must be ended before the right of action accrues.

When the right accrues.

ARTICLE III.

OTHER TORTS TO THE PERSON.

SECTION 1.—*False Imprisonment.*

SECTION 2.—*Malicious Arrest.*

SECTION 3.—*Nuisances and other Injuries to Health.*

SECTION I.

FALSE IMPRISONMENT.

SECTION.

2939. Definition.

2940. Under warrant.

SECTION.

2941. Joint act of several.

§ 2939. False imprisonment consists in the unlawful detention of the person of another, for any length of time, whereby he is deprived of his personal liberty.

Definition.

§ 2940. If the imprisonment is by virtue of a warrant, neither the party *bona fide* suing out, nor the officer who in good faith executes the same, is guilty of false imprisonment, though the

Under warrant.

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Section 2.—Malicious Arrest.

Presump-
tion.

warrant be defective in form, or be void for want of jurisdiction. In such cases the good faith must be determined from the circumstances of each case. The same is true of the judicial officer issuing the warrant, the presumption being always against him as to good faith, when he has no jurisdiction.

Joint act
of several.

§ 2941. If the imprisonment be the act of several persons, the party may sue them jointly or separately, and if jointly, all shall be responsible for the entire recovery.

SECTION II.

MALICIOUS ARREST.

SECTION.

2942. Definition.

2943. Malice.

SECTION.

2944. Probable cause.

2945. Person exempt.

Definition.

§ 2942. An arrest under process of law, without probable cause, when done maliciously, gives a right of action to the party arrested.

Malice.

§ 2943. Malice may consist in personal spite, or in a general disregard of the right consideration of mankind, directed by chance against the individual injured.

Probable
cause.

§ 2944. "Want of probable cause" is the same in this action as in "malicious prosecution."

Person ex-
empt.

§ 2945. The willful arrest, under civil process, of a person exempt by law from such arrest, shall be deemed malicious until the contrary is proved.

SECTION III.

NUISANCES AND OTHER INJURIES TO HEALTH.

SECTION.

2946. Public or private.

2947. Special damage.

2948. Injury to person or property.

2949. What is a nuisance.

2950. Right of alienage.

SECTION.

2951. Injunction.

2952. Unwholesome provisions.

2953. Adulterated drugs.

2954. Mistake of druggist.

Public and
private.

§ 2946. Nuisances are either public or private. A public nuisance is one which damages all persons who come within the sphere of its operations, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. Generally, a public nuisance gives

Section 3.—Nuisances and Other Injuries to Health.

no right of action to any individual, but must be abated by a process instituted in the name of the State. A private nuisance gives a right of action to the person injured.

§ 2947. If, however, a public nuisance causes special damage to an individual, in which the public do not participate, such special damage gives a right of action.

Special
damages.

§ 2948. A private nuisance may injure either the person or property, or both, and in either case a right of action accrues.

Injury to
person or
property.

§ 2949. A nuisance is any thing that worketh hurt, inconvenience, or damage, to another; and the fact that the act done may otherwise be lawful, does not keep it from being a nuisance. The inconvenience complained of must not be fanciful, or such as would affect only one of fastidious taste, but it must be such as would affect an ordinary reasonable man.

What is a
nuisance.

§ 2950. The alienee of the person owning the property injured, may sue for a continuance of the nuisance; so the alienee of the property causing the nuisance is responsible for a continuance of the same. In the latter case, there must be a request to abate before action brought.

Right of
allience.

§ 2951. Where the consequences of a nuisance about to be erected or commenced will be irreparable in damages, and such consequences are not merely possible, but to a reasonable degree certain, a Court of Equity may interfere to arrest a nuisance before it is completed.

Injunction.

§ 2952. A person who knowingly or carelessly sells to another unwholesome provisions of any kind, the defect being unknown to the purchaser, and damage results to the purchaser, or his family, or his property, such person shall be liable in damages for such injury.

Unwhole-
some pro-
visions.

§ 2953. A person who, knowingly or carelessly, by himself or his agents, sells to another adulterated drugs or liquors, by the use of which damage accrues to the purchaser, or his patients, or his family, or his property, shall be liable in damages for the injury done.

Adultera-
ted drugs.

§ 2954. If a vendor of drugs and medicines, by himself or his agent, either knowingly or negligently furnishes the wrong article or medicine, and damage accrues from the use of the drug or medicine furnished, to the purchaser, or his patients, or his family, or his property, the vendor shall respond in damages for the injury done. If death ensues to the purchaser, in any case arising

Mistake of
druggist.

Section 4.—Indirect Injuries to the Person.

under this or the two foregoing paragraphs, the right of action shall be to the widow or children, as prescribed in cases of physical injuries.

SECTION IV.

OF INDIRECT INJURIES TO THE PERSON.

SECTION.

2955. Negligence by trustee.
 2956. Abducting or harboring wife.
 2957. Criminal conversation.
 2958. Seduction of daughter.

SECTION.

2959. Furnishing liquor to minor son.
 2960. Or gaming with him.
 2961. Procurer of wrong, etc.

Negligence by trustee. § 2955. In every case of trust or confidence reposed, in consideration of a reward paid or promised, negligence in the person trusted, to the injury of the other, will give a right of action.

Abducting or harboring wife. § 2956. A husband has a right of action against another for abducting or harboring his wife. Furnishing shelter and food to a wife driven from her home by cruel treatment is an act of humanity, and gives no right to the husband.

Crim. con. § 2957. Adultery, or criminal conversation with a wife gives a right of action to the husband. In such cases, proof of the marriage may be made by general reputation, and the parties living together as man and wife.

Seduction of daughter. § 2958. The seduction of a daughter unmarried and living with her parent, whether followed by pregnancy or not, gives a right of action to the father, or to the mother, if the father be dead, or absent permanently, or refuses to sue. No loss or service need be alleged or proved. The seduction is the gist of the action, and in well defined cases the damages should be exemplary.

Furnishing liquor to minor son. § 2959. A father, or if the father be dead, a mother shall have a right of action against any person who sells or furnishes spirituous liquors to his or her son under age, for his own use, and without his or her permission.

Gaming with him. § 2960. A like right of action shall accrue against any person who shall play and bet at any game of chance with a minor son for money or other thing of value.

Procurer of wrong is joint wrong-doer. § 2961. In all cases he who maliciously procures an injury to be done to another, whether it be an actionable wrong or a breach of contract, is a joint wrong-doer, and may be sued either alone or jointly with the actor.

CHAPTER III.

OF INJURIES TO PROPERTY.

ARTICLE 1.—*To Real Estate.*ARTICLE 2.—*To Personalty Generally.*ARTICLE 3.—*To Railroad Companies.*

ARTICLE I.

TO REAL ESTATE.

SECTION.

2962. Interfering with enjoyment, etc.
 2963. Right of possession.
 2964. Bare possession.
 2965. Bare title.
 2966. Disputed possession.

SECTION.

2967. Water courses.
 2968. Underground streams.
 2969. Rights above and below surface.
 2970. Right of way or of common.
 2971. Slander of title.

§ 2962. The right of enjoyment of private property being an absolute right of every citizen, every act of another which unlawfully interferes with such enjoyment, is a cause of action. Interfering with enjoyment of.

§ 2963. The bare right of possession to lands authorizes their recovery by the owner of such right, and also damages for the withholding of the right. Right of possession.

§ 2964. The bare possession of lands authorizes the possessor to recover damages from any person who wrongfully, in any manner, interferes with such possession.* Bare possession.

§ 2965. The person having title to lands, if no one is in actual possession under the same title with him, may maintain an action for a trespass thereon; and if a tenant be in possession, and the trespass be such as injures the freehold, the owner, or a remainder-man, or reversioner, may still maintain trespass. Bare title.

§ 2966. Where two persons claim to have actual possession of the same land, he is deemed in possession who has the legal title, and the other is a trespasser. Disputed possession.

§ 2967. The owner of land is entitled to the free and exclusive enjoyment of all water courses, not navigable, flowing over his land; and the diverting of the stream, wholly or in part, from the Water courses.

* See Title 6, Chapter 7.

Article 2.—Injuries to Personalty Generally.

same, or the obstructing thereof so as to impede its course or cause it to overflow or injure his land, or any right appurtenant thereunto, or the adulterating thereof so as to interfere with its value to him, is a trespass upon his property.

Under-
ground
streams. § 2968. The course of a stream of water underground, and its exact condition before its first use are so difficult of ascertainment, that trespass can not be brought for any supposed interference with the rights of a proprietor.

Rights
above and
below the
surface. § 2969. The owner of realty having title downwards and upwards indefinitely, an unlawful interference with his rights, below or above the surface, alike gives him a right of action.

Right of
way, etc. § 2970. The unlawful interference with the right of way, or of common, is a trespass to the party entitled.

Slander of
title. § 2971. The owner of any estate in lands may maintain an action for libelous or slanderous words, falsely and maliciously impugning his title, if any damage has accrued to him therefrom.

ARTICLE II.

OF INJURIES TO PERSONALTY GENERALLY.

SECTION.
2972. Injury to possession.
2973. Mere possession.
2974. Trover.

SECTION.
2975. Trespass.
2976. In cases of bailment.
2977. Remainder interest.

Injury to
possession. § 2972. The owner of personalty is entitled to the possession thereof. Any deprivation of such possession is a tort for which an action lies.

Mere pos-
session. § 2973. Mere possession of a chattel, if without title, or wrongfully, will give a right of action for any interference therewith, except as against the true owner or the person wrongfully deprived of possession.

Trover. § 2974. Trover may be used as a form of action to recover the possession of chattels, an alternative verdict in damages to be discharged on delivery of the property, being taken; but it shall not be necessary to prove any conversion of the property where the defendant is in possession when the action is brought.

Trespass. § 2975. Any abuse of or damage done to the personal property of another unlawfully, is a trespass for which damages may be recovered.

Article 3.—Injuries by Railroad Companies.

§ 2976. In cases of bailments, where the possession is in the bailee, a trespass committed during the existence of the bailment will give a right of action to the bailee for the interference with his special property, and a concurrent right of action to the bailor for the interference with his general property. —

In cases of bailments.

§ 2977. A remainder-man, or reversioner of personalty, may maintain an action against a wrong-doer for any injury going to destroy the existence or ultimate value of the property. In such cases the tenant in possession, and remainder-man or reversioner, may sue jointly for the injury to the entire estate, the recovery being held under like limitations.

Remainder interests.

ARTICLE III.

OF INJURIES BY RAILROAD COMPANIES.

SECTION.

- 2978. Damages for right of way.
- 2979. Damage by running of cars, etc.
- 2980. Consent or negligence.
- 2981. Injury by co-employee.
- 2982. Record of stock killed.
- 2983. Report of marks and brands.
- 2984. Report to be posted.
- 2985. Liability of overseer.
- 2986. Railroad liable—when.

SECTION.

- 2987. Damage to stock.
- 2988. Notice to railroad.
- 2989. Form of notice.
- 2990. Trial, judgment, etc.
- 2991. Appeal.
- 2992. Levy and sale.
- 2993. Disposition of proceeds.
- 2994. Tender of damages.
- 2995. Suits by a partner, etc.

§ 2978. In controversies with respect to the damages to be assessed for the right of way under any railroad charter, the award of a majority of the appraisers appointed under the charter shall be sufficient.

Damages for right of way.

§ 2979. A railroad company shall be liable for any damage done to persons, stock, or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employment and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence—the presumption in all cases being against the company.

Damages by running of cars, etc.

§ 2980. No person shall recover damage from a railroad company for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the for-

Consent or negligence.

Article 3.—Injuries by Railroad Companies.

mer may recover, but the damages shall be diminished by the jury in proportion to the amount of default attributable to him.

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Injury by co-employee § 2981. If the person injured is himself an employee of the company, and the damage was caused by another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to the recovery.

Record of stock killed. § 2982. Every railroad company shall require of every engine-runner employed by them to render daily, to a proper officer, an account of any stock or other property injured as aforesaid, which returns shall be kept recorded in a book, and open for the inspection of all persons. For the failure to keep such a record, and to require such return, the company shall be liable for ten per cent. extra damage to every person whose property is injured by them.

Report of overseers, etc. § 2983. [All overseers or track-menders on the different railroads in this State, shall file weekly with the station agents, a list of the different marks and brands of all stock killed upon their respective sections the preceding week, so as to be compelled to identify in their weekly report, on what part of their section such stock was, or may have been killed, by some designated place on said section.] (a)

Report to be posted—where. § 2984. [Said list shall be placed in a conspicuous place, in the office of the said station agents, for the inspection of all persons concerned.] (a)

Overseer—when liable. § 2985. [Upon failure of any overseer or track-mender to comply with the provisions of Section 2983, he shall be liable to pay the owners of said stock, double the value of all stock killed on his particular section, and not reported during such failure; the same to be recovered in the same manner as now provided by law for the collection of claims for stock killed on railroads in this State.] (a)

Railroad company liable—when. § 2986. [In case the overseer or track-mender is insolvent, then and in that case, the railroad company in whose employ they are, shall be liable to pay according to the provisions of Section 2985: *provided*, that in all cases, where the penalty shall be collected from the overseer or track-mender, the liability of the railroad company in whose employment they may be, shall thenceforth cease.] (a)

§ 2987. [The several railroad companies in this State, including

Article 3.—Injuries by Railroad Companies.

the Western and Atlantic Railroad, shall be held liable, under the rules hereinafter prescribed, for any damage done to any live stock or other property (except for the assessment of damages for right of way), to the owner or owners thereof, by the running of cars, locomotives or other machinery upon their roads respectively, and for damage done by any person or persons, in the employ or service of such railroad companies, and for damage done by any such railroad company by any means whatever.] (a)

Damage to
live stock.

§ 2988. [Any person whose stock has been or may be killed, wounded, or injured, or whose property has been destroyed or damaged (with the exception contained in the preceding Section) by the running of any cars, engines, locomotives, or other machinery used by a railroad company, on any railroad, or by any act done by any person or persons in the employ of a railroad company, or the officers, agents, engineers, or conductors of any such company, may serve a written notice, describing the kind of stock killed, crippled, or injured, and the particular kind of property damaged or destroyed, which notice shall contain a statement of the time and place, as near as can be ascertained, when and where the damage was done, and may be served personally upon any employee of such company, at any place where such officer or agent in the employ or service of such company may be found, at least three days previous to the day of trial, or by leaving a copy of such notice at the residence of such employee five days previous thereto, and which notice shall be served at any time within three months after the happening of the injury complained of, and not after—which service shall be deemed and held sufficient notice to such company to authorize the Court to proceed to give judgment as in cases of debt.] (a)

Notice to
railroad.

§ 2989. [A notice in substance and form as follows, subject to such alterations and additions as the circumstances of the case may require, shall be deemed sufficient :

Form of
notice.

GEORGIA, }
—— COUNTY, } To THE —— RAILROAD COMPANY :

You are hereby notified, that within the last three months, to wit, on the —— day, or night, of ——, you damaged the subscriber, by killing, or destroying (as the case may be,) (here mention the par-

(a) Acts of 1853-4, pp. 93-4-5, as amended by Act of 1863; Laws of 1862-3, p. 159.

Article 3.—Injuries by Railroad Companies.

particular damage done, and the kind or species of property injured or destroyed, belonging to him or her), by the running of a car, engine, or locomotive, or other machinery on your road; and desiring that the amount of damages may be legally assessed, you are hereby required, by agent or attorney, or in person, to appear at the Justice's court-ground in the ——— district G. M., (inserting the number of the district in which the damage was done) by ten o'clock A. M. on ——— next, then and there to show cause, if any exist, why the damage shall not be assessed according to law. This ——— day of ———, 18—. JOHN DOE.] (a)

Trial, judgment, and execution.

§ 2990. [In all cases the plaintiff shall state in his notice that the damages do not exceed thirty dollars. The Justice of the Peace in the district shall attend at the court-ground in the district, at the time specified in the notice, hear the evidence produced, determine the amount of damages, and enter up judgment therefor, with costs; and the plaintiff may give testimony himself, as any other witness. A judgment entered up under the provisions of this Section, by the Justice of the Peace, shall be final and conclusive between the plaintiff and railroad company, touching the particular matter for which such judgment may be rendered, except as hereinafter provided for on appeal. The Justice of the Peace shall forthwith issue his execution in favor of the plaintiff against the defendant for such damages as may have been assessed, with all the costs which may have accrued—which execution shall be directed to all and singular the Sheriffs and Constables of the State of Georgia, and may be levied and executed by any levying officer in any County of this State where the property may be found.] (a)

Appeal.

§ 2991. [The railroad company, by its officer, agent, or attorney at law, may at any time after such judgment is rendered, and before a sale under the execution, enter an appeal, by filing with the Justice of the Peace or levying officer an affidavit that the amount of such judgment or verdict is, to the best of his belief, not justly due to the plaintiff; whereupon, and on the payment of all costs, the said Justice of the Peace and Sheriff shall return to the Clerk of the Superior Court of the County where the suit commenced, all the papers in their hands, and also said affidavit;

(a) Acts of 1853-4, pp. 93-4-5, as amended by Act of 1863; Laws of 1862-3, p. 159.

Article 3.—Injuries by Railroad Companies.

and the said Court shall proceed to try said cause in the same manner and under the same restrictions as other appeal causes are tried, and award judgment and execution accordingly.] (a)

§ 2992. [When a Sheriff or Constable shall levy an execution issued under the provisions of the foregoing Sections, upon property of the defendant, he shall advertise the same for at least fifteen days, in some public gazette, published weekly, on the line or at the terminus of said road, in this State, and to proceed to sell the same for the satisfaction of such damages and costs; and such levying officer shall be entitled to a commission of ten per cent. for selling, besides two dollars for advertising and one dollar for the levy.] (a)

Levy, advertisement, and sale.

§ 2993. [The cost, in all cases, shall be the first money paid, and after satisfying the plaintiff's demand, the excess, if any, arising from such sale shall be subject to the order of the President of such company.] (a)

Disposition of proceeds of sale.

§ 2994. [Nothing in the seven preceding Sections shall prevent a railroad company, or the agent or employee of such company, who may be served with a notice of a damage done, from tendering to the owner of such property damaged or destroyed, a reasonable amount, as a compensation for the damage so done, which, if accepted by the party aggrieved, shall stop all further proceedings; but the injured party may or may not accept the sum tendered, and if he refuse and proceed to investigate the matter, under the provisions of the seven preceding Sections, and shall fail to recover a larger amount than the sum so tendered, he shall pay all costs, and the railroad company shall be discharged from further liability, by paying the damages assessed; and in all cases when an injured party shall claim damages exceeding thirty dollars, suit shall be brought in the Superior Court, by written notice, served upon the nearest agent or officer of said railroad company to plaintiff's residence, or by leaving a copy at their place of doing business twenty days before Court.] (a)

Tender and its effects.

§ 2995. [In all cases where any species of live stock or other property shall be killed, injured, or destroyed by the running of an engine, locomotive, car, or other machinery upon any railroad in this State, which belongs to partners or joint owners, or where

Suits by a partner or joint owner.

(a) Acts of 1853-4, pp. 93-4-5 as amended by Act of 1863; Laws of 1862-3, p. 159.

Article 1.—Justification.

the owner is absent, any one of the partners or joint owners, or any authorized agent of the absent owner, shall have power to institute suit in his own name against the railroad company liable for the damages; and any verdict or judgment obtained against such company, by a part owner, or agent of an absent owner, shall be a full and complete bar to the recovery of any other part owner, or the absent owner, in respect to the particular matter investigated, and the cost shall be taxed as provided in other cases of debt.] (a)

CHAPTER IV.
OF DEFENSES.

- ARTICLE 1.—*Of Justification.*
- ARTICLE 2.—*Of Satisfaction and Herein of Tender.*
- ARTICLE 3.—*Of Limitation of Actions.*
- ARTICLE 4.—*Other Defenses.*

ARTICLE I.
OF JUSTIFICATION.

SECTION.	SECTION.
2996. Justification.	2998. Consent.
2997. Extenuation.	

346 § 2996. In every case of tort, if the defendant was authorized by law to do the act complained of, he may plead the same as a justification; by such plea he admits the act to be done, and shall be entitled to all the privileges of one holding the affirmative of the issue.

Extenua- § 2997. What does not amount to justification may be pleaded in extenuation and mitigation of damages.

Consent. § 2998. As a general rule, there can be no tort committed to a person consenting thereto, if that consent be free and not obtained by fraud, and be the action of a sound mind. The consent

(a) Acts of 1853-4, pp. 93-4-5, as amended by Act of 1863; Laws of 1862-3, p. 159.

Article 2.—Satisfaction and Herein of Tender.

of a person incapable to consent, as a minor, and in some cases a married woman, can not affect the rights of the husband, parent, or guardian.

ARTICLE II.

OF SATISFACTION AND HEREIN OF TENDER.

SECTION.

2999. Satisfaction.

3000. Compounding a felony.

SECTION.

3001. Tender of damages.

3002. Tender in trover.

§ 2999. If the tort complained of does not amount to a crime, ^{Satisfaction.} the person injured may consent to a satisfaction and settlement thereof; and if it does amount to a crime, the person injured may agree upon and receive compensation for the personal injury. Any attempt, however, to satisfy the public offense, or to suppress a prosecution therefor, is illegal, and vitiates the entire agreement, except in those cases where the law expressly allows of such a settlement.

§ 3000. If the offense sought to be satisfied, or the prosecution ^{Compound-} sought to be suppressed, amounts to a felony, the agreement itself ^{ing a felony.} is an offense under the Penal Code, and though executed, is no defense to an action for the tort. But if the offense is not a felony, and the agreement is fully executed, it shall be a satisfaction for the private tort.

§ 3001. A person committing a tort to the person or property, ^{Tender of} may, before or after suit brought, tender to the person injured ^{damages.} such an amount of damages as in his judgment covers the injury, and if the same be rejected, he may deposit the amount in the office of the Clerk of the Superior Court of the County of his residence, as a continued tender; and if the jury trying the cause shall give no more damages than the amount tendered, the plaintiff shall recover no costs accruing subsequent to the time of the tender.

§ 3002. In actions for the recovery of personal property, if the defendant, at the first term, will tender the property to the plaintiff, together with reasonable hire for the same since the conversion, disclaiming all claim of title, the costs of the action shall be paid by the plaintiff, unless he can prove a previous demand of the defendant, and a refusal to deliver it up. ^{Tender in} ^{trover.}

Article 3.—Limitation of Actions.

ARTICLE III.

. OF LIMITATION OF ACTIONS.

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3003. Damages to realty.

3064. To personalty.

SECTION.

3005. To the person.

3006. Disabilities.

§ 3003. All actions for trespass upon, or damages to realty, shall be brought within four years after the right of action accrues.

Damages
to realty.

To person-
alty.

§ 3004. Actions for injuries to personalty shall be brought within four years after the right of action accrues.

To the per-
son.

§ 3005. Actions for injuries done to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year.

§ 3006. The disabilities and exceptions prescribed in limiting actions on contracts shall be allowed and held applicable to actions for torts.

Disabilities.

ARTICLE IV.

OF OTHER DEFENSES.

SECTION.

3007. Arbitrament and award.

3008. Former recovery, etc.

SECTION.

3009. Infancy.

'Arbitra-
ment and
award.

§ 3007. Arbitrament and award is a good defense to an action for a tort, and the rules prescribed in reference to this defense to a contract, apply equally to a tort.

Former re-
covery, etc.

§ 3008. Former recovery, and the pendency of another suit, are also good defenses, and subject to the same rules as when applied to contracts. Sometimes a party may sue either for the tort or upon the contract: in such case, he must elect on which he will proceed.

Infancy.

§ 3009. Infancy is no defense to an action for a tort, provided the defendant has arrived at those years of discretion and accountability prescribed by this Code for criminal offenses.

CHAPTER V.

OF DAMAGES.

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3010. General rule.
 3011. Aggravation.
 3012. Vindictive damages.
 3013. Necessary expenses.
 3014. Division.
 3015. General damages.
 3016. Direct and consequential.
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SECTION.

3018. Rule to ascertain.
 3019. Exception to the rule.
 3020. Against joint trespassers.
 3021. Contribution.
 3022. Highest amount proved.
 3023. Death, etc., of property.
 3024. Verdict in trover—effect on title.

§ 3010. Damages are given as compensation for the injury done, General rule. and generally this is the measure where the injury is of a character capable of being estimated in money. If the injury be small, or the mitigating circumstances be strong, nominal damages only are given. *309a 241*
23 - 500
20 - 330

§ 3011. In every tort there may be aggravating circumstances, Aggravation. either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrong-doer from repeating the trespass, or as compensation for the wounded feelings of the plaintiff. *26 - 250*

§ 3012. In some torts the entire injury is to the peace, happiness, or feelings of the plaintiff; in such cases no measure of damages can be prescribed, except the enlightened conscience of impartial jurors. The worldly circumstances of the parties, the amount of bad faith in the transaction, and all the attendant facts should be weighed. The verdict of the jury, in such a case, should not be disturbed, unless the Court should suspect bias or prejudice from its excess or its inadequacy. Vindictive damages. *30 - 140*
" 330
" 423
5 - 1000

§ 3013. In all cases, necessary expenses consequent upon the injury done are a legitimate item in the estimate of damages. Necessary expenses. *23 - 17*

§ 3014. Damages may be either general or special, direct or consequential. Division.

§ 3015. "General" damages are such as the law presumes to flow from any tortious act, and may be recovered without proof of any amount. "Special" damages are such as actually flowed from the act, and must be proved in order to be recovered. General damages.
Special.

§ 3016. "Direct" damages are such as follow immediately upon the act done. "Consequential" damages are such as are the necessary and connected effect of the tortious act, though to some extent depending upon other circumstances. Direct and consequential.

Chapter 5.—Damages.

§ 3017. If the damages are only the imaginary or possible result of the tortious act, or other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be the basis of recovery against the wrong-doer.

§ 3018. Damages which are the legal and natural result of the act done, though contingent to some extent, are not too remote to be recovered. But damages traceable to the act, but not its legal or material consequence, are too remote and contingent.

§ 3019. If, however, the tort is committed, or the contract broken, or the duty omitted, with a knowledge and for the purpose of depriving the party injured of such benefits as are specified in the last paragraph, then the remote damages are made by such knowledge and intent a proper subject for consideration by the jury.

§ 3020. Where several trespassers are sued jointly, the plaintiff may recover against all, damages for the greatest injury done by either. But the jury may in their verdict specify the particular damages to be recovered of each, and judgment in such case must be entered severally.

§ 3021. If judgment is entered jointly against several trespassers, and is paid off by one, the others shall be liable to him for contribution.

§ 3022. In estimating the value of personalty unlawfully detained, the plaintiff may recover the highest amount which he can prove between the time of the conversion and the trial.

§ 3023. The death, or destruction, or any material injury to the property pending the litigation, shall be no defense to a mere wrong-doer. If the defendant is a *bona fide* claimant, and the injury arises from the act of God, and in no wise the result of defendant's conduct, the jury may take the same into consideration, but in no case shall such an event cast the costs upon the plaintiffs.

§ 3024. An alternative verdict in an action of trover, so far vests the title to the property sued for in the plaintiff that, until the judgment is paid by the defendant, such judgment shall have the first lien on the property sued for, to the exclusion of all other claims whatsoever.

NOTE.—As to setting off “valuable improvements” against mesne profits, see Title 7, Chapter 9, Article 8.

TITLE IX.

OF EQUITY.

- CHAPTER 1.—*General Principles.*
 CHAPTER 2.—*Of Discovery.*
 CHAPTER 3.—*Of Perpetuation of Testimony.*
 CHAPTER 4.—*Of Accidents and Mistake.*
 CHAPTER 5.—*Of Accounts and Set-off.*
 CHAPTER 6.—*Of Administration of Assets.*
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 CHAPTER 8.—*Of Election.*
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 CHAPTER 11.—*Of Partition.*
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CHAPTER I.

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 3040. Common law remedy.
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 3042. Masters.
 3043. Receivers.
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§ 3025. All equity jurisdiction in this State is vested in the Jurisdiction.
Superior Courts of the several Counties.

§ 3026. Equity jurisdiction is established and allowed for the Grounds
of relief.
 protection and relief of parties where, from any peculiar circum-

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stances, the operation of the general rules of law would be deficient in protecting from anticipated wrong, or relieving for injuries done.

Choice of form. § 3027. No suitor, however, is compelled to appear on the equity side of the Court; but he may institute his proceeding for an equitable cause of action upon the common law side of the Court at his option, and the Court may allow the jury to find a verdict, and a judgment be rendered thereon, so moulded and framed to give equitable relief in the case, as verdicts and decrees are rendered and framed in equity proceedings.

Equity follows the law. § 3028. Equity is ancillary, not antagonistic to the law; hence equity follows the law where the rule of law is applicable, and the analogy of the law where no rule is directly applicable.

Complainant must do equity. § 3029. He who would have equity must do equity, and give effect to all equitable rights in the other party respecting the subject-matter of the suit.

Complete justice. § 3030. Equity seeks always to do complete justice, and hence, having the parties before the Court rightfully, it will proceed to give full relief to all parties in reference to the subject-matter of the suit, provided the Court has jurisdiction for that purpose.

What ought to be done is done. § 3031. Equity considers that done which ought to be done, and directs its relief accordingly.

Equities equal. § 3032. Where equities are equal, the law will prevail. If equities are unequal, the superior equity must prevail. Superior diligence as to time will create such inequality.

Volunteers. § 3033. The equity under trust or contract for value is superior to that of a mere volunteer.

Party misled. § 3034. The equity of a party who has been misled is superior to that of him who willfully misleads him.

Equality is equity. § 3035. In many cases, equality is equity in the distribution of equitable assets.

Notice. § 3036. He who takes with notice of an equity, takes subject to that equity.

Bona fide purchaser. § 3037. A *bona fide* purchaser for value, and without notice of an equity, will not be interfered with by a Court of Equity.

Both parties at fault. § 3038. When both parties are at fault, and equally so, equity will not interfere, but leaves them where it finds them. The rule is otherwise, if the fault of one overbalances, decidedly, that of the other.

Laches. § 3039. Equity gives no relief to one whose long delay renders

Chapter 1.—General Principles.

the ascertainment of the truth difficult, though no legal limitation bars the right.

§ 3040. Equity will not take cognizance of a plain legal right, where an adequate and complete remedy is provided by law; but a mere privilege to a complainant to sue at law, or the existence of a common law remedy, not as complete or effectual as the equitable relief, shall not deprive equity of jurisdiction. Common law remedy. 359m 261 36-545

§ 3041. Where law and equity have concurrent jurisdiction, the Court first taking will retain it, unless a good reason can be given for the interference of equity. Concurrent jurisdiction. 374a 378

§ 3042. In equity causes, the Court may refer any part of the facts to a master or auditor, and his report thereon shall be *prima facie* the truth, after allowance by the Court, either party having the liberty to except. But the final decision upon the facts shall be by a special jury. Masters. 304a 308

§ 3043. Courts of Equity shall have authority to appoint receivers to take possession of and protect trust or joint property and funds, whenever the danger of destruction and loss shall require such interference. 3092 Receivers. 36-180 39-380

§ 3044. All orders and decrees of the Court may be enforced by attachment against the person; decrees for money may be enforced by execution against the property. Attachment and execution.

§ 3045. Generally, equity jurisprudence embraces the same matters of jurisdiction and modes of remedy in Georgia as was allowed and practiced in England. Extent of jurisdiction.

CHAPTER II.

OF DISCOVERY.

SECTION.

- 3046. Discovery.
- 3047. Privilege of party.
- 3048. Extent of discovery.
- 3049. Under oath.

SECTION.

- 3050. Answer—how far evidence.
- 3051. What is responsive.
- 3052. Answers of co-defendant.

§ 3046. A Court of Equity may compel either party to discover facts within his knowledge beneficial to the other party and material to his case; and this either upon a bill for discovery and relief, or for discovery alone, ancillary to some other civil proceedings. Discovery. 37-264

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May be waived. But the party seeking relief may waive discovery, and in such case the defendant's answer is not evidence.

Privilege of party. § 3047. No party shall be required to discover matters tending to criminate himself, or to expose him to a penalty or forfeiture, nor to make discovery of irrelevant matters, nor the advice of his professional advisers, nor his consultation with them, nor matters relating to his own and not the plaintiff's case; nor can official persons be called on to disclose any State matters of which the policy of the State and the interest of the community require concealment.

Extent of discovery. § 3048. The discovery must be full and free as to all matters of fact of which it is properly sought, and must include the respondent's information and belief. If documents are desired in defendant's possession or power, he must produce or satisfactorily account for them.

Under oath. § 3049. The discovery must be under oath or affirmation, but may be confined to those points to which special interrogatories are placed in the bill.

Answer—how far evidence. § 3050. The answer of a defendant, as to facts within his own knowledge responsive to the discovery sought, is evidence in his favor, and can be rebutted only by two witnesses, or one witness and corroborating circumstances. The complainant is not bound to read any portion of the answer, except that responsive to the bill. The defendant may read all as pleading. If the bill is for discovery alone, then the whole answer must be read together. And in the latter case, the complainant must pay the costs.

What is response. § 3051. What is responsive is a question for the Court. Any explanation of an admission made, or fact necessarily connected with it, is part of the response. Any matter in avoidance thereof is new matter, and must be proved.

Answers of co-defendants. § 3052. The answer of one defendant is evidence for another, whenever it states facts against his own interest, and in favor of his co-defendants.

CHAPTER III.

OF PERPETUATION OF TESTIMONY.

SECTION.

3053. When it may be done.
3054. Possession immaterial.

SECTION.

3055. When evidence.
3056. Costs.

§ 3053. Courts of Equity may entertain proceedings for the perpetuation of testimony, in all cases, where the fact to which the testimony relates can not be made immediately the subject of investigation at law, and the common law proceeding authorized under this Code, for any cause, can not be available, or as completely available, as a proceeding in equity. When it may be done

§ 3054. It is immaterial as to the possession of the property, nor will the proceeding be denied, though all parties in interest can not be ascertained or reached. Possession immaterial.

§ 3055. Testimony thus taken shall be afterward used only from the necessity of the case, but in such case may be used against all persons, whether parties to the proceeding or not. When evidence.

§ 3056. The complainant shall in all such cases be taxed with the costs. Costs.

CHAPTER IV.

OF ACCIDENT AND MISTAKE.

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3057. What is accident.
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3063. Parol evidence admissible.
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3071. Negligence.
3072. Mutual ignorance.
3073. In execution of a power.
3074. Setting aside judgment.

§ 3057. An accident relievable in equity is such an occurrence, not the result of negligence or misconduct of the party seeking relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a Court of Law. What is accident.

§ 3058. In cases of lost bonds or negotiable securities, the Court will decree payment, upon indemnity given against liability or loss thereon. Lost bonds or notes.

Chapter 4.—Accident and Mistake.

§ 3059. If the form of conveyance is, by accident or mistake, contrary to the intention of the parties in their contract, equity will interfere to make it conform thereto.

Error in form.

§ 3060. Equity seeks always to construe conditions subsequent into covenants, and to relieve against forfeitures, where the rules of construction will allow.

Rule of construction.

§ 3061. Equity will not interfere to relieve against accidents or mistakes of mere volunteers, but if the contract is actually executed, then all the rights growing out of it against or in favor of any body, will be enforced.

Volunteers.

§ 3062. Mistake relievable in equity, is some unintentional act, or omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence. This power is exercised with caution, and to justify it, the evidence must be clear, unequivocal, and decisive as to the mistake.

What is mistake.

§ 3063. Parol evidence is admissible to prove a mistake in a deed, or any other contract required by law to be in writing.

Parol evidence.

§ 3064. Equity will grant the relief as between the original parties or their privies in law, in fact, or in estate, except *bona fide* purchasers for value without notice.

Against whom, etc.

§ 3065. Mistakes may be either of law or of fact.

Division of mistakes.

§ 3066. Mere ignorance of the law on the part of the party himself, where the facts are all known, and there is no misplaced confidence, and no artifice, or deception, or fraudulent practice is used, by the other party, either to induce the mistake of law, or to prevent its correction, will not authorize the intervention of equity.

Ignorance of law.

§ 3067. An honest mistake of the law as to the effect of an instrument on the part of both contracting parties, when such mistake operates as a gross injustice to one, and gives an unconscientious advantage to the other, may be relieved in equity.

Mistake of law by parties.

§ 3068. A mistake of law in the draughtsman, or other agent, by which the contract, as executed, does not fulfill, or violates the manifest intention of the parties to the agreement, is relievable in equity.

By the draughtsman or agent.

§ 3069. A distinction exists between reforming a contract and executing a contract in case of mistake. To authorize the former the Court must be satisfied by the evidence that the mistake was mutual; but the Court may refuse to act in the latter case, if the mistake is confined to the party refusing to execute.

Reforming a contract, etc.

§ 3070. In all cases of a mistake of a fact material to the con-

Chapter 5.—Account and Set-off.

tract, or other matter affected by it, if the party complaining applies within a reasonable time, equity will relieve. Mistake of fact.

§ 3071. If the party, by reasonable diligence, could have had knowledge of the truth, equity will not relieve; nor will the ignorance of a fact, known to the opposite party, justify an interference, if there has been no misplaced confidence, nor misrepresentation, nor other fraudulent act. Negligence. Concealment.

§ 3072. Ignorance by both parties of a fact does not justify the interference of the Court; nor will a mistake, in judgment or opinion merely, as to the value of property, authorize such interference. Mutual ignorance, etc.

§ 3073. Accident or mistake, in the execution of a power, or causing the defective execution of the power, will be remedied in equity. In execution of a power.

§ 3074. Equity will interfere to set aside a judgment of a Court having jurisdiction only where the party had a good defense of which he was entirely ignorant, or where he was prevented from making it by fraud or accident, or the act of the adverse party, unmixed with fraud or negligence on his part. Setting aside a judgment.

CHAPTER V.

OF ACCOUNT AND SET-OFF.

SECTION.

- 3075. Accounts.
- 3076. Mingling goods.
- 3077. Contribution.
- 3078. Discharge of incumbrances.
- 3079. Apportionment.

SECTION.

- 3080. Surcharge and falsify.
- 3081. Offer to pay balance.
- 3082. Appointment of auditor.
- 3083. Effect of a report.
- 3084. Equitable set-off.

§ 3075. Equity jurisdiction over matters of account extends to mutual accounts growing out of privity of contract, or where accounts are complicated and intricate, or where a discovery or writ of *ne exeat* is prayed and granted, or where the account is of a trust fund, or accounts between partners and tenants in common, or where a multiplicity of suits would render a trial difficult, expensive, and unsatisfactory at law. Accounts.

§ 3076. If a party, having charge of the property of others so confounds it with his own that the line of distinction can not be Mingling of goods.

drawn, all the inconvenience is thrown upon him who causes the confusion, and he must distinguish his own property or lose it.

Contribution. § 3077. In cases of joint, or joint and several, or of several liabilities of two or more persons, where all are equally bound to bear the common burden, and one has paid more than his share, he is entitled to contribution from the others; and whenever the circumstances are such that an action at law will not give a complete remedy, equity may entertain jurisdiction.

Discharge of incumbrances. § 3078. Where several persons are interested in an estate as tenants for years, or for life, or in remainder or reversion, and incumbrances are to be discharged, the equitable division of the burden, according to the several interests, is a question for equitable interference.

Apportionment. § 3079. Apportionment of a contract, or of rent or hire, may, from peculiar circumstances rendering the common law remedy incomplete, become the subject of equitable jurisdiction.

Surcharge and falsify. § 3080. A party objecting to a stated account must surcharge and falsify. The former is to allege omissions; the latter is to deny the correctness of certain of the items rendered. One palpably fraudulent item casts suspicion upon the entire account.

Offer to pay balance. § 3081. A bill for an account need not offer to pay a balance if found against complainant.

Appointment of auditor. § 3082. In all cases involving account, either party, as a matter of right, may apply to the Judge, either in term or vacation, for the appointment of an auditor, who shall, after notice, sit and hear the evidence submitted by either party, investigate their accounts, and report the result thereof to the Court.

Effect of report. § 3083. The report so made may be objected to by either party on the ground of illegal rejection or admission of evidence, or any other ground impeaching its propriety, which objections shall be heard and decided by the Court. The report, when finally accepted, shall be admitted as evidence to the jury, with such instructions as to the effect to be given to it, as the Court shall give under the circumstances of each case.

Equitable set-off. § 3084. As to set-off, equity generally follows the law; but if there is an intervening equity not reached by the law, or if the set-off be of an equitable nature, the Courts of Equity take jurisdiction to enforce the set-off.

CHAPTER VI.

OF ADMINISTRATION OF ASSETS.

SECTION.

3085. Legal and equitable assets.
 3086. Partly legal and partly equitable.
 3087. Interfering with administration.
 3088. Bills for direction.
 3089. Marshaling assets.
 3090. Election.
 3091. Creditor's bills.

SECTION.

3092. Receiver's duty.
 3093. Must account to the Court.
 3094. Misplacing trust funds.
 3095. Tracing assets.
 3096. Equitable assets for creditors.
 3097. Joint and individual assets.

§ 3085. Assets are either legal or equitable: the former are such as may be reached by the ordinary process of law; the latter are such as can be reached only through the intervention of a Court of equity. The former, when properly before a Court of equity, are distributed according to legal liens and priorities; the latter, according to justice and right in the particular case, the general rule being that equality is equity. Legal and equitable assets. 74294

§ 3086. Sometimes assets are partly legal and partly equitable; in such cases, while the above rule is adhered to, as to the legal assets, equity will so administer the equitable as to produce general equality. Partly legal and partly equitable.

§ 3087. Equity will not interfere with the regular administration of estates, except upon the application of the representative, either, first, for construction and direction; second, for marshaling the assets; or upon the application of any person interested in the estate, where there is danger of loss or other injury to his interests. Interfering with administration.

§ 3088. In cases of difficulty in construing wills, or in distributing estates, in ascertaining the persons entitled, or in determining under what law property should be divided, the representative may ask the direction of the Court, but not on imaginary difficulties or from excessive caution. Bills for direction.

§ 3089. In all cases where legal difficulties arise as to the distribution of assets in payment of debts, or where, from any circumstances, the ordinary process of law would interfere with the due administration, without fault on the part of the representative of the estate, a bill to marshal assets will be maintained at his instance. Marshaling assets. 214m 150

§ 3090. In marshaling assets, the Court will look to the equities of creditors, and where cases arise for election will compel the parties to elect. Election.

Chapter 6.—Administration of Assets.

§ 3091. Creditors' bills may be filed at the instance of any creditor, the privilege being extended to all to appear and become parties in a reasonable time.

§ 3092. A Court of Equity may appoint a receiver to take possession of, and hold subject to the direction of the Court, any assets charged with the payment of debts, where there is manifest danger of loss, or destruction, or material injury to those interested. Under extraordinary circumstances, a receiver may be appointed before, and without notice to the trustee or other person having charge of the assets. The terms on which a receiver is appointed shall be in the discretion of the Chancellor.

§ 3093. The receiver is an officer and servant of the Court appointing him, is responsible to no other tribunal than a Court of equity, and must in all things obey its direction.

§ 3094. All persons aiding and assisting trustees of any character, with a knowledge of their misconduct, in misapplying assets, are directly accountable to the persons injured.

§ 3095. When assets are misapplied and can be traced in the hands of persons affected, with notice of the misapplication, the trust attaches still to the assets, and equity will aid in restoring them to their legitimate purpose. A creditor of an estate may follow assets in the hands of legatees or distributees, though they receive them without notice.

§ 3096. Equitable assets may be reached by a creditor, in every case, where he shows that there is danger of not being satisfied out of legal assets.

§ 3097. Joint assets will be applied to joint debts, and individual assets to individual debts; but when the joint assets are exhausted, the joint debts may come upon individual assets—the individual debts, without regard to relative dignity as compared with the joint debts, being first advanced the *pro rata* amount received on the joint debts from joint assets.

CHAPTER VII.

OF CHARITIES.

SECTION.

- 3098. Charitable bequest.
- 3099. *Cy pres*.
- 3100. Subjects of charity.

SECTION.

- 3101. Right of supervision.
- 3102. What is irreligious.
- 3103. Extraneous evidence.

Chapter 7.—Charities.

§ 3098. Equity has jurisdiction to carry into effect the charitable bequest of a testator, or founder, or donor, where the same are definite and specific in their objects, and capable of being executed. Charitable bequest.

§ 3099. If the specific mode of execution be for any cause impossible, and the charitable intent be still manifest and definite, the Court may, by approximation, give effect in a manner next most consonant with the specific mode prescribed. *Cy pres.*

§ 3100. The following subjects are proper matters of charity for the jurisdiction of equity: Subjects of charity.

1. The relief of aged, impotent, diseased, or poor people.
2. Every educational purpose.
3. Provisions for religious instruction or worship.
4. For the construction or repair of public works, or highways, or other public conveniences.
5. The promotion of any craft or persons engaging therein.
6. For the redemption or relief of prisoners or captives.
7. For the improvement or repair of burying-grounds or tombstones.
8. Other similar subjects, having for their object the relief of human suffering, or the promotion of human civilization.

§ 3101. A charity once inaugurated is always subject to the supervision and direction of a Court of Equity, to render effectual its purpose and object. Right of supervision.

§ 3102. Nothing shall be deemed religious in its character which affirms doctrines licentious in their tendency, or inconsistent with the peace and safety of the State. What is irreligious.

§ 3103. If the terms of the bequest or deed are obscure, doubtful, or equivocal, other evidence may be looked to to ascertain the sense in which particular expressions are used, but not to make definite that which in itself is too indefinite for execution. Extraneous evidence.

CHAPTER VIII.

OF ELECTION.

SECTION.

3104. Election.
3105. By a legatee.
3106. By the Court.

SECTION.

3107. Compensation to defeated legatee.
3108. Election under deeds.

Chapter 8.—Election.

§ 3104. A case of election arises whenever a person is entitled to one of two benefits, to each of which he has legal title, but to enforce both would be unconscientious and inequitable to others having claims upon the same property or fund. In such cases equity has jurisdiction to compel an election.

§ 3105. When a testator has affected to give property not his own, and has given a benefit to a person to whom that property belongs, the devisee or legatee must elect either to take under or against the instrument. The rule does not apply if the will itself, from other causes, is not efficient in passing the title to the property of the devisee or legatee; nor if the testator had an interest in such property upon which the will may operate; nor if the bequest shows that the testator intended to bequeath only in the event that his own title was good; nor if the benefit given to the party called upon to elect is not from testator's own property, but by virtue of a power of appointment in him.

§ 3106. If from any cause the legatee is incompetent to elect, the Court will, after investigation as to values, elect for him.

§ 3107. If the election be made against the will, the defeated legatee or devisee is entitled to compensation out of the property bequeathed to the party electing, to the value of the defeated legacy.

§ 3108. The foregoing principles apply to deeds as well as wills.

CHAPTER IX.

OF EXECUTION OF POWERS.

SECTION.

- 3109. Jurisdiction over powers.
- 3110. Discretion.
- 3111. Collusive execution.

SECTION.

- 3112. Illusory appointment.
- 3113. Consent of trustee.
- 3114. In cases of no discretion, etc.

§ 3109. Powers, especially of appointment, being always founded on trust or confidence, are peculiarly subjects of equitable supervision.

§ 3110. Equity can not compel a party having a discretion, to exercise a power of appointment. But it may relieve against mistaken or defective executions, or collusive or illusory executions.

§ 3111. Every execution is collusive, whereby the person exer-

Chapter 9.—Execution of Powers.

cising the power uses it by contrivance for his own benefit, he not being legitimately an intended beneficiary. Collusive execution.

§ 3112. An illusory appointment is one where a nominal benefit only is given to one of a class to all of whom a substantial benefit was intended. Illusory appointment.

§ 3113. Where marriage is required to be by consent of trustees, and from any corrupt or insufficient motive such consent is withheld, equity will compel a consent, or give relief as if such consent was had. Consent of trustees.

§ 3114. In all cases where no discretion is allowed, or the discretion allowed is abused, equity has jurisdiction to compel a faithful execution of the power. In cases of no discretion, or discretion abused.

CHAPTER X.

OF FRAUD.

SECTION.

- 3115. Jurisdiction over fraud.
- 3116. Actual and constructive.
- 3117. Misrepresentation.
- 3118. Suppression of the truth.
- 3119. Frauds not by words.
- 3120. Confidential relations.

SECTION.

- 3121. Annuling deeds, judgments, etc.
- 3122. Inadequacy of consideration, etc.
- 3123. Surprise.
- 3124. Fraudulent trade-marks, etc.
- 3125. Marriage brokerage bonds.
- 3126. Contracts in fraud of marital rights.

§ 3115. In all cases of fraud (except fraud in the execution of a will), equity has concurrent jurisdiction with the Courts of Law. Jurisdiction over fraud.

§ 3116. Fraud may be actual or constructive. Actual fraud consists in any kind of artifice by which another is deceived. Constructive fraud consists in any act of omission or commission contrary to legal or equitable duty, trust or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. The former implies moral guilt; the latter may be consistent with innocence. Actual and constructive

§ 3117. Misrepresentation of a material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party, or if made by mistake, and innocently, and acted on by the opposite party, constitutes legal fraud. Misrepresentation.

§ 3118. Suppression of a fact material to be known, and which the party is under an obligation to communicate, constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case. Suppression of the truth.

§ 3119. Fraud may be consummated by signs, or tricks, or through agents employed to deceive, or any other unfair way used to cheat another.

Fraud not
in words.

§ 3120. Any relations shall be deemed confidential arising from nature, or created by law, or resulting from contracts, where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another ; or where from similar relations of mutual confidence the law requires the utmost good faith, such as partners, principal, and agent, etc.

Confidential
relations.

§ 3121. Fraud will authorize a Court of Equity to annul conveyances, however solemnly executed, and to relieve against awards, judgments, and decrees obtained by imposition.

Annuling
deeds, judgments,
etc.

§ 3122. Great inadequacy of consideration, joined with great disparity of mental ability in contracting a bargain, may justify a Court of Equity in setting aside a sale or other contract.

Inadequacy
of consideration,
etc.

§ 3123. Any thing which happens without the agency or fault of the party affected by it, tending to disturb and confuse the judgment, or to mislead him, and of which the opposite party takes an undue advantage, is in equity a surprise, and one species of fraud for which relief is granted.

Surprise.

§ 3124. Any attempt to encroach upon the business of a trader, or other person, by the use of similar trade-marks, names, or devices, with the intention of deceiving and misleading the public, is a fraud for which equity grants relief.

Fraudulent
trade-marks,
etc.

§ 3125. The policy of the law being opposed equally to restrictions on marriage, and to marriages not the result of free choice, all contracts or bonds made with a view to trammel or to force marriage, are deemed fraudulent and void.

Marriage
brokerage
bonds.

§ 3126. A secret settlement by a wife on the eve of marriage is a fraud on the marital rights of the husband, and void, though the husband had no knowledge of the existence of the property settled.

Contract in
fraud of marital
rights.

CHAPTER XI.

OF PARTITION.

SECTION.

3127. Partition.

3128. Passing title.

SECTION.

3129. Moulding decree.

§ 3127. Equity has jurisdiction in cases of partition whenever

Chapter 12.—Specific Performance.

the remedy at law is insufficient, or peculiar circumstances render the proceeding in equity more suitable and just.

§ 3128. The decree on a proceeding to partition shall pass the title without the execution of any conveyances by the parties.

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Partition.
82278
Passing
title. 3926

Moulding
decree.

§ 3129. The Court will mould its decree, in every case, to meet the general justice and equity of each person entitled, and in its discretion, may postpone or deny either a partition or a sale, if it shall appear that the present or prospective interest of each tenant may not be protected thereby.

CHAPTER XII.

OF SPECIFIC PERFORMANCE.

SECTION.

- 3130. When decreed.
- 3131. Parol contract to land.
- 3132. Of personalty.
- 3133. Voluntary and gratuitous promise.

SECTION.

- 3134. Inadequacy.
- 3135. Ability of complainant to comply.
- 3136. Damages for breach.

§ 3130. Specific performance of a contract (if within the power of the party) will be decreed, generally, whenever the damages recoverable at law would not be an adequate compensation for the non-performance.

When de-
creed.

§ 3131. The specific performance of a parol contract as to land, will be decreed if the defendant admits the judgment, or if it be so far executed by the party seeking relief, and at the instance, or by the inducements of the other party, that if the contract be abandoned, he can not be restored to his former position. Full payment alone, accepted by the vendor, or partial payment, accompanied with possession, or possession alone, with valuable improvements, if clearly proved in each case to be done with reference to the parol contract, will be sufficient part performance to justify a decree.

Parol con-
tract to
land.

§ 3132. Any good reason, in equity and good conscience, why the complainant should have the possession of specific personalty to which he has title, will sustain a bill for specific performance or delivery, and, unless rebutted by other equitable reasons, will justify a decree. The jury, in such cases, may decree either damages or specific delivery.

Of per-
sonalty.

§ 3133. It will not be decreed of a voluntary agreement, or

Voluntary and gratuitous promises merely gratuitous promise. If, however, possession of lands has been given under such agreement, upon a meritorious consideration, and valuable improvements made upon the faith thereof, equity will decree the performance of the agreement.

Inadequacy of price. § 3134. Mere inadequacy of price, though not sufficient to rescind a contract, may justify a Court in refusing to decree a specific performance; so also any other fact showing the contract to be unfair or unjust, or against good conscience.

Ability of complainant to comply. § 3135. The vendor seeking specific performance must show an ability to comply substantially with his contract in every part, and as to all the property; but a want of title, or other inability as to part, will not be a good answer to the vendee seeking performance, who is willing to accept title to the part, receiving compensation for the other. If the defects in vendor's title be trifling, or comparatively small, equity will decree, at his instance, granting compensation for such defects.

Damages for breach. § 3136. If, for any cause, the specific performance is impossible, or the vendee declines to accept a performance in part, the Court may proceed to assess damages for the breach of the contract.

CHAPTER XIII.

OF TRUST AND TRUSTEES.

SECTION.

- 3137. Trusts.
- 3138. Resulting trusts.
- 3139. Court will appoint trustee.

SECTION.

- 3140. Limitation of actions.
- 3141. Relief granted.

Trusts. § 3137. Trusts of every kind, not generally cognizable at law, are peculiar subjects of equity jurisdiction.

Resulting trusts. § 3138. Whenever the circumstances are such that the person taking the legal estate, either from fraud or otherwise, can not enjoy the beneficial interest without violating some established principle of equity, the Court will declare him a trustee for the person beneficially entitled, if such person has not waived his right by subsequent ratification or long acquiescence.

Trustee. § 3139. A trust shall never fail for the want of a trustee.

Limitation of act. § 3140. Subsisting trusts, cognizable only in a Court of Equity, are not within the ordinary statutes of limitation; but in all cases

Article 1.—Mandamus, Quo Warranto, and Prohibition.

equity will consider the lapse of time in decreeing an account, and where, from it and other circumstances, it would be inequitable, any relief will be refused.

§ 3141. The relief granted, in cases of trust, will always be so moulded and framed as to render the trust effectual, and secure the best interests of all parties. Relief granted.

CHAPTER XIV.

OF EXTRAORDINARY REMEDIES.

ARTICLE 1.—*Of Mandamus, Quo Warranto, and Prohibition.*

ARTICLE 2.—*Of Injunction.*

ARTICLE 3.—*Ne Exeat, and Quia Timet.*

ARTICLE 4.—*Of Bills of Peace and Interpleader.*

ARTICLE I.

MANDAMUS, QUO WARRANTO, AND PROHIBITION.

SECTION.

3142. To enforce official duty.

3143. Lies not for private remedy.

3144. When not granted.

3145. Granted in vacation.

SECTION.

3146. Governor not liable.

3147. *Quo warranto.*

3148. Prohibition.

§ 3142. All official duties should be faithfully fulfilled, and whenever, from any cause, a defect of legal justice would ensue from a failure or improper fulfillment, the writ of mandamus may issue to compel a due performance, if there be no other specific legal remedy for the legal rights. To enforce official duty.

§ 3143. Mandamus does not lie as a private remedy between individuals to enforce private rights, nor to a public officer who has an absolute discretion to act or not, unless there is a gross abuse of such discretion, but it is not confined to the enforcement of mere ministerial duties. Lies not for private remedy.

§ 3144. Mandamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless; nor will it be granted on a mere suspicion or fear, before a refusal to act or a wrongful act done. In cases of discretion.

Article 2.—Injunction.

§ 3145. The writs of mandamus, *quo warranto*, and prohibition may be granted at any time, on proper showing made, but the return must be in term time, and any issues of fact made thereon, must be tried as other equity causes.

§ 3146. Neither of these writs will lie to the duly inaugurated Governor of the State, but they do lie to all other executive or military officers.

§ 3147. The writ of *quo warranto* may issue to inquire into the right of any person to any public office, the duties of which he is in fact discharging, but must be granted at the suit of some person, either claiming the office or interested therein.

§ 3148. The writ of prohibition is the counterpart of mandamus, to arrest illegal proceedings by any Court officer where no other legal remedy or relief is given; and the granting or refusal thereof, is governed by the same principles of right, necessity, and justice.

ARTICLE II.

OF INJUNCTION.

SECTION.

- 3149. For what purpose granted.
- 3150. Granted *ex parte*.
- 3151. Dissolution at chambers.
- 3152. Enjoining a Court of law.
- 3153. To restrain a trespass.

SECTION.

- 3154. Answer of defendant.
- 3155. Verdict and appeal.
- 3156. Second injunction.
- 3157. Can not compel.
- 3158. Perpetual injunction.

§ 3149. Equity by a writ of injunction, may restrain proceedings in another or the same Court, or a threatened, or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience, and for which no adequate remedy is provided at law.

§ 3150. Injunction may be granted in vacation and upon an *ex parte* showing in the discretion of the Judge, and upon such terms as to the affidavit and giving bond and security, as the Judge may direct. But the Judge may require notice to the party to be enjoined, and appoint a day and place for hearing the application.

§ 3151. The defendant may move the dissolution of an injunction, or the revoking of any other extraordinary writ, in vacation, on ten days' notice to the opposite party or his solicitor, and the

Article 2.—Injunction.

Chancellor shall decide thereon upon the same principles as if presiding in term. The complainant by disclaiming discovery, can not deprive the defendant of the benefit of his answer on a motion to dissolve the injunction; upon such a motion, affidavits of witnesses may be adduced by either party.

§ 3152. Equity will not enjoin the proceedings and processes of a Court of Law, unless there is some intervening equity, or other proper defense, of which the party, without fault on his part, can not avail himself at law. Enjoining a Court of law

§ 3153. Equity will not interfere to restrain a trespass, unless the injury is irreparable in damages, or the trespasser is insolvent, or there exists other circumstances which, in the discretion of the Court, render the interposition of this writ necessary and proper, among which shall be the avoidance of circuitry and multiplicity of actions. The granting and continuing of the injunction must always rest in the sound discretion of the Judge, according to the circumstances of each case. To restrain a trespass. 38-112 in a To Chanc. Ct. 35-8a 214 Sound discretion. 366

§ 3154. The answer of the defendant, so far as the same is founded on his own knowledge and responsive to the allegations of the bill, shall always be considered on a motion to dissolve. Answer of defendant.

§ 3155. An injunction is not dissolved by a verdict, if an appeal be entered in the time allowed by law. Verdict and appeal.

§ 3156. A second injunction may be granted in the discretion of the Judge. Second injunction.

§ 3157. An injunction can only restrain—it can not compel a party to perform an act. It may restrain until performance. Can not compel.

§ 3158. A perpetual injunction can be granted only after a hearing and upon a final decree. Perpetual injunction.

ARTICLE III.

NE EXEAT AND QUIA TIMET.

SECTION.

- 3159. May issue—when.
- 3160. Applicants showing.
- 3161. Defendant may give bond.
- 3162. Discretion of the Court.

SECTION.

- 3163. Affidavit and bond of complainant.
- 3164. May issue without sanction—when.
- 3165. *Quia timet* may issue—when.

§ 3159. The writ of *ne exeat* issues to restrain a person from leaving the jurisdiction of the State, and may be granted in the following cases: *Ne exeat.*

Article 3.—*Ne Exeat* and *Quia Timet*.

1. At the instance of a creditor whose debt is not due, or where, from some other cause, the ordinary process is not available or sufficient against his debtor, or against a third person secondarily or otherwise, under any circumstances, chargeable with the debt.

2. In favor of an obligor or promisor, or partner against his co-obligor, or joint promisor, or copartner, equally or partly responsible with him for the debt or duty to be performed.

3. In favor of a surety on a debt not due, against his co-surety.

4. Against persons illegally removing the property of a decedent, or of an orphan, or married woman, at the instance of any person interested therein, or of a next friend of such orphan or married woman.

5. At the instance of a remainder-man or reversioner, against any one attempting to remove the property in which such remainder or reversion exists, or may contingently exist.

6. At the instance of a mortgagee against a person holding the equity of redemption.

7. At the instance of any person interested legally or equitably in property about to be removed, where no adequate remedy is afforded at law.

§ 3160. In every case of application for the writ of *ne exeat*, the party must show that no adequate remedy is afforded at law, and that the defendant is either removing, or about to remove, himself or his property, or the specific property to which the complainant claims title or an interest.

§ 3161. The defendant may, in all cases, relieve himself or his property, or the specific property, from the restraint imposed, by giving bond in double the value of plaintiff's claim, with good security, to the officer serving the process, for the forthcoming of each or either (according to the tenor of the writ), to answer to complainant's claim, or abide by the order and decree of the Court. The Judge granting the writ may, in his discretion, require a larger bond. The officer receiving insufficient security shall be held surety himself, and the sureties on his bond may be held responsible therefor.

§ 3162. If the defendant fails or refuses to replevy the property, the Court may, in its discretion, make such disposition of it as shall appear most advantageous to all parties.

§ 3163. In every application for a writ of *ne exeat*, the allega-

Article 3.—*Ne Exeat* and *Quia Timet*.

tions of the bill must be verified by the affidavit of one or more of the complainants; and the Judge may, in his discretion, require the complainant to give bond and security for the payment of any damages which the defendant may recover of him, for suing out the writ before granting an order for the issuing of the same, and may require a verification by all or any of the complainants.

Affidavit
and bond of
complainant.

§ 3164. In cases of emergency, upon the affidavit of the complainant that he can not obtain the sanction of the Judge in time to remedy the mischief, the writ of *ne exeat* may issue at once, to continue until the first term of the Court to which it is returnable, unless earlier heard by order of the Judge.

When issued without
sanction.

§ 3165. The proceeding *quia timet* is sustained in equity for the purpose of causing to be delivered up and canceled, any instrument which has answered the object of its creation, or any forged or other iniquitous deed, or other writing, which, though not enforced at the time, either casts a cloud over complainant's title, or otherwise subjects him to future liability, or present annoyance, and the cancellation of which is necessary to his perfect protection.

Quia timet.

ARTICLE IV.

BILLS OF PEACE AND INTERPLEADER.

SECTION.

3166. Bill of peace.

3167. Perpetual injunction.

SECTION.

3168. Interpleader.

3169. Collateral to other proceedings.

§ 3166. It being the interest of this State that there should be an end of litigation, equity will entertain a bill of peace—

Bill of
peace.

1. To confirm some right which has been previously satisfactorily established by more than one legal trial, and is likely to be again litigated.

2. To avoid a multiplicity of suits by establishing a right, in favor of or against several persons, which is likely to be the subject of legal controversy, or in other similar cases.

§ 3167. As ancillary to this jurisdiction, equity will grant perpetual injunctions.

Perpetual
injunction.

§ 3168. Wherever a person is possessed of property or funds, or owes a debt or duty to which more than one person lays claim,

Inter-
pleader.

Article 4.—Bills of Peace and Interpleader.

and the claims are of such a character as to render it doubtful or dangerous for the holder to act, he may apply to equity to compel the claimants to interplead.

394a191 § 3169. If, in the progress of any proceeding in equity, the Court perceives a necessity for parties to interplead, it may order ^{Collateral and other} such interpleader as collateral and ancillary to the main case. proceedings.

All the extraordinary remedies of equity may be enforced by attachments.

Not allowed in this case
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PART III.

THE CODE OF PRACTICE.

TITLE I.

OF THE JUDGES, SESSIONS, AND ADJOURNMENTS OF COURTS.

CHAPTER 1.—*Of the Supreme Court.*

CHAPTER 2.—*Of the Superior and Inferior Courts.*

CHAPTER 3.—*Of the Judges of the Superior Courts.*

CHAPTER I.

OF THE SUPREME COURT.

SECTION.

3170. Times and place of holding.

3171. May be adjourned to another time.

SECTION.

3172. May be adjourned to another place.

§ 3170. [The Supreme Court of the State of Georgia shall be held in Milledgeville, twice in every year, by two or more of the Judges of said Court, on the first Monday in June and December of each year, and shall continue until the business is disposed of.] (a)

Times and
place of
holding.

§ 3171. It shall be the duty of all the Judges of said Court to attend each term thereof; but if from providential cause any one of the Judges can not attend the Court, such Court may be held by two Judges, and if only one Judge shall attend, it shall be his duty to open the Court, and adjourn from day to day for one week, and if at the expiration of that time (or sooner if he is fully advised), one other Judge can not attend, and no appointment is made by the Governor as hereinbefore provided, he shall adjourn the Court until the next regular term, and if no Judge

All the
Judges shall
attend.

How and
for what
causes ad-
journed.

(a) Acts of 1865-6, p. 56; Acts of 1866, p. 46.

Article 1.—Number and Times of Sessions.

attends, it shall be the duty of the Clerk and Sheriff, or either of them, to adjourn said Court as above provided.

§ 3172. When from providential cause the Supreme Court can not be held at the time and place designated by law, it may be adjourned by order of the Judges, or any two of them, in vacation, to some other convenient time and place, and the session then held shall be valid, and notice shall be given of such adjournment if possible.

CHAPTER II.

OF THE SUPERIOR AND INFERIOR COURTS.

ARTICLE 1.—*Number and Times of Sessions of Superior Courts.*

ARTICLE 2.—*Adjournments of the Superior and Inferior Courts.*

ARTICLE I.

NUMBER AND TIMES OF SESSIONS.

SECTION.

3173. Superior Courts to be held twice.

SECTION.

3174. Times of sessions, etc.

§ 3173. The Superior Courts shall be held in each County in the respective Judicial Circuits twice in every year, by one or more of the Judges of the Superior Courts, at the several times hereinafter mentioned.

§ 3174. The times of holding the Superior Courts are as follows :*

BLUE RIDGE CIRCUIT.

Cherokee—First Monday in March and first Monday in August.

Cobb—Third Monday in March and first Monday in October.

Milton—Fourth Monday in March and third Monday in August.

Forsyth—First Monday in April and fourth Monday in August.

Lumpkin—Second Monday in April and first Monday in September.

Dawson—Third Monday in April and third Monday in September.

Pickens—Fourth Monday in April and fourth Monday in September.

Gilmer—Second Monday in May and second Monday in October.

Fannin—Third Monday in May and third Monday in October.

Union—Fourth Monday in May and fourth Monday in October.

Towns—Thursday after fourth Monday in May and October; but should the business of the Union Court require it, Towns Court may, by order of the presiding Judge, be adjourned to Monday thereafter.

* As to Counties in which the Superior Court sits two or more weeks, see local acts.

Article 1.—Number and Times of Sessions.

BRUNSWICK CIRCUIT.

Appling—First Monday in March and first Monday in September.
Camden—Friday after the fourth Monday in April and October.
Charlton—Monday after the fourth Monday in April and October.
Clinch—Fourth Monday in March and fourth Monday in September.
Coffee—Second Monday in March and second Monday in September.
Echols—Monday after fourth Monday in March and September.
Glynn—Third Monday in April and third Monday in October.
Pierce—Thursday before the first Monday in March and September.
Ware—Third Monday in March and third Monday in September.
Wayne—Fourth Monday in April and fourth Monday in October.

CHATTAHOOCHEE CIRCUIT.

Chattahoochee—Fourth Monday in March and fourth Monday in September.
Harris—Second Monday in April and second Monday in October.
Marion—Third Monday in April and third Monday in October.
Muscogee—Second Monday in May and second Monday in November.
Schley—Second Monday in April and second Monday in October.
Talbot—Third Monday in March and third Monday in September.
Taylor—First Monday in April and first Monday in October.

CHEROKEE CIRCUIT.

Bartow—Second Monday in March and second Monday in September.
Catoosa—Second Monday in May and second Monday in November.
Chattooga—First Monday in March and first Monday in September.
Dade—Fourth Monday in May and fourth Monday in November.
Gordon—First Monday in April and first Monday in October.
Murray—Third Monday in April and third Monday in October.
Walker—Monday before the first Monday in March and September.
Whitfield—Fourth Monday in April and fourth Monday in October.

COWETA CIRCUIT.

Clayton—First Monday in May and first Monday in November.
DeKalb—Fourth Monday in April and fourth Monday in October.
Fayette—Second Monday in March and second Monday in September.
Fulton—First Monday in April and first Monday in October.
Meriwether—Third Monday in February and third Monday in August.
Troup—Third Monday in May and third Monday in November.

EASTERN CIRCUIT.

Bryan—Fourth Monday in April, and second Monday after fourth Monday in November.
Bullock—Friday after third Monday in March, and Friday after fourth Monday in October.
Chatham—Second Monday in January and second Monday in May.
Effingham—Monday after fourth Monday in March, and second Monday after fourth Monday in October.

Article 1.—Number and Times of Sessions.

- Liberty—Third Monday in April, and Monday after fourth Monday in November.
McIntosh—Thursday after second Monday in April, and Thursday after fourth Monday in November.
Montgomery—Thursday after the second Monday in March, and Thursday after third Monday in October.
Tattnall—Third Monday in March, and fourth Monday in October.

FLINT CIRCUIT.

- Butts—Second Monday in March and second Monday in September.
Henry—Third Monday in April and third Monday in October.
Monroe—Fourth Monday in February and fourth Monday in August.
Newton—Third Monday in March and third Monday in September.
Pike—First Monday in April and first Monday in October.
Spalding—First Monday in February and first Monday in August.
Upson—First Monday in May and first Monday in November.

MACON CIRCUIT.

- Bibb—Third Monday in May and third Monday in November.
Crawford—First Monday in March and first Monday in September.
Dooly—First Monday in April and first Monday in October.
Houston—Third Monday in February and third Monday in August.
Macon—Second Monday in March and second Monday in September.
Twiggs—Fourth Monday in March and fourth Monday in September.

MIDDLE CIRCUIT.

- Burke—Third Monday in May and third Monday in November.
Columbia—First Monday in March and first Monday in September.
Emanuel—Second Monday in April and second Monday in October.
Jefferson—Second Monday in May and second Monday in November.
Johnson—Fourth Monday in March and fourth Monday in September.
Richmond—Second Monday in January and second Monday in June.
Scriven—First Monday in May and first Monday in November.
Washington—Second Monday in March and second Monday in September.

NORTHERN CIRCUIT.

- Elbert—Second Monday in March and second Monday in September.
Glasscock—Third Monday in February and third Monday in August.
Hancock—Second Monday in April and second Monday in October.
Hart—Third Monday in March and third Monday in September.
Lincoln—Fourth Monday in April and fourth Monday in October.
Madison—First Monday in March and first Monday in September.
Oglethorpe—Third Monday in April and third Monday in October.
Taliaferro—Fourth Monday in February and fourth Monday in August.
Warren—First Monday in April and first Monday in October.
Wilkes—Fourth Monday in March and fourth Monday in September.

OCMULGEE CIRCUIT.

- Baldwin—Fourth Monday in February and fourth Monday in August.

Article 1.—Number and Times of Sessions.

Greene—Second Monday in March and second Monday in September.
Jasper—Fourth Monday in April and fourth Monday in October.
Jones—Third Monday in April and third Monday in October.
Morgan—First Monday in March and first Monday in September.
Putnam—Fourth Monday in March and fourth Monday in September.
Wilkinson—First Monday in April and first Monday in October.

PATAULA CIRCUIT.

Clay—Fourth Monday in February and fourth Monday in August.
Early—First Monday in April and first Monday in October.
Miller—Second Monday in April and second Monday in October.
Quitman—Third Monday in May and third Monday in November.
Randolph—First Monday in May and first Monday in November.
Stewart—Third Monday in April and third Monday in October.
Terrell—Fourth Monday in May and fourth Monday in November.
Webster—Second Monday in March and second Monday in September.

SOUTHERN CIRCUIT.

Berrien—Monday after Irwin Court.
Brooks—Monday after Lowndes Court.
Colquitt—Monday after third Monday in May and November.
Irwin—On Thursday after Telfair Court.
Laurens—Second Monday in April and second Monday in October.
Lowndes—Monday after Colquitt Court.
Pulaski—Third Monday in April and third Monday in October.
Telfair—Friday after fourth Monday in April and October.
Thomas—Monday after Brooks Court.
Wilcox—Fourth Monday in April and fourth Monday in October.

SOUTH-WESTERN CIRCUIT.

Baker—Third Monday in May and third Monday in November.
Calhoun—Third Monday in March and third Monday in September.
Decatur—Fourth Monday in April and fourth Monday in October.
Dougherty—First Monday in June and first Monday in December.
Lee—Fourth Monday in March and fourth Monday in September.
Mitchell—Second Monday in May and second Monday in November.
Sumter—Second Monday in April and second Monday in October.
Worth—Third Monday in April and third Monday in October.

TALLAPOOSA CIRCUIT.

Campbell—Third Monday in February and third Monday in August.
Carroll—First Monday in April and first Monday in October.
Coweta—First Monday in March and first Monday in September.
Floyd—Second Monday in January and second Monday in July.
Haralson—Third Monday in April and third Monday in October.
Heard—Third Monday in March and third Monday in September.
Paulding—First Monday in February and first Monday in August.
Pelk—Fourth Monday in January and fourth Monday in July.

Article 2.—Adjournments of the Superior and Inferior Courts.

WESTERN CIRCUIT.

Banks—First Monday in April and first Monday in October.
 Clarke—First Monday in February and second Monday in August.
 Franklin—Second Monday in April and second Monday in October.
 Gwinnett—First Monday in March and second Monday in September.
 Habersham—Third Monday in April and third Monday in October.
 Hall—Third Monday in March and third Monday in September.
 Jackson—Fourth Monday in February and fourth Monday in August.
 Rabun—First Monday in April and first Monday in October.
 Walton—Third Monday in February and third Monday in August.
 White—Monday after fourth Monday in April and October.

ARTICLE II.

OF ADJOURNMENTS OF THE SUPERIOR AND INFERIOR COURTS.

SECTION.

3175. Superior Court may be adjourned.
 3176. May be adjourned in vacation.
 3177. May be adjourned in term time.

SECTION.

3178. Adjourned and special terms.
 3179. Inferior Court may be adjourned.
 3180. May be adjourned in term time.

Adjourn-
ment by
Clerk from
day to day.

§ 3175. In case of unavoidable accidents, whereby the Superior Court in any County shall not be held at the time appointed for holding the same, the Clerk of such Court shall adjourn the same from day to day, not exceeding two days; and unless the presiding Judge shall order to the contrary within the two days aforesaid, the Clerk shall then adjourn said Court to the next term.

Clerk of
Superior
Courts, etc.

To be ad-
vertised.

For provi-
dential cause
only, etc.

Judges
may hold
adjourned
terms.

§ 3176. When the Clerk of the Superior Court is informed by the presiding Judge that it is not possible for him to attend the regular term of said Court from sickness of himself or his family, or other unavoidable cause, which shall be expressed in the order of adjournment, the Clerk shall adjourn such Court to such time as the Judge may direct, and shall advertise the same at the Court House of the County in which said Court is to be held, and one or more times in a public gazette.

§ 3177. No Superior Court shall be adjourned by the Judge in vacation, except for the causes above stated; but the Judge may, in term time, adjourn such Court to such time as he may think fit.

§ 3178. [The Judges of the Superior Courts of this State may, in their discretion, hold adjourned terms of said Courts in every County within their respective Circuits, when the business requires it to close the dockets, and may, in the exercise of a sound discretion, cause new juries to be drawn for the same, or order

Chapter 3.—The Judges of the Superior Courts.

the juries drawn for the regular term to give their attendance at such adjourned terms; and such Judges are authorized to hold special terms of said Courts for the trial of criminals, in any County of their Circuits, at discretion, and to compel the attendance of Grand and Petit Jurors, either of a previous term, or to draw new jurors for the same, according to the laws now of force.] (a)

And special terms.

§ 3179. If, from any circumstance, a majority of the Justices of the Inferior Court, in any of the Counties of this State, should fail to attend at any session of said Inferior Court, it shall and may be lawful for any one of the Justices of said Court in the County where such failure may take place, together with the Sheriff, or his deputy, Coroner, or Constable, and the Clerk of said Court, to adjourn said Court to such time as they, in their judgment, may think proper; and if no one of said Justices should attend on the first day of any session, their Clerk shall have the same power as the Clerk of the Superior Court in such cases until one of such Justices shall attend.

Adjournment of Inferior Court, etc.

§ 3180. The Inferior Court may be adjourned in term time, as the Superior Court.

May be adjourned by the Clerk.

CHAPTER III.

OF THE JUDGES OF THE SUPERIOR COURTS.

SECTION.

3181. Rules of practice, etc.
3182. All other rules void.

SECTION.

3183. Judges must not express opinion.
3184. Must charge the jury specially.

§ 3181. The several Judges of the Superior Courts of this State may convene at the seat of Government once in each year, at such time as they, or a majority of them, may appoint, for the purpose of establishing uniform rules of practice throughout the several Circuits of this State; which rules, so established, shall be published immediately after the adjournment of said convention.

Rules of the Superior Court, etc.

Must be published.

§ 3182. All rules of practice for the Superior or Inferior Courts, prescribed by any other authority than that which has, by the previous Section, been deputed to all the Judges of the Superior

All other rules void.

(a) Acts of 1861, p. 56; and Acts of 1865-6, p. 59.

Chapter 3.—The Judges of the Superior Courts.

Courts of Georgia, in convention, shall be null and void and inoperative.

§ 3183. It is error for any or either of the Judges of the Superior Courts of this State, in any case, whether civil or criminal, or in equity, during its progress, or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved, or as to the guilt of the accused; and should any Judge of said Court violate the provisions of this Section, such violation shall be held by the Supreme Court to be error, and the decision in such case reversed, and a new trial granted in the Court below with such directions as the said Supreme Court may lawfully give.

§ 3184. The Judges of the Superior Courts shall, at the first Court in each year, give the law on the subject of educating the poor, specially in charge to the Grand Juries, together with his suggestion and arguments upon their duty and policy in relation to the same, and shall also at each term of said Court in every year, give specially in charge to said Grand Juries the law against gaming, gambling with negroes, carrying deadly weapons, furnishing negroes with poisonous drugs, [the law requiring railroads to furnish water and light on trains, and the Section against forestalling, regrating and engrossing.] (a) *

TITLE II.

OF ACTIONS.

CHAPTER 1.—*General Principles.*

CHAPTER 2.—*Of Attachments.*

CHAPTER 3.—*Petition and Process.*

CHAPTER 4.—*Of the Venue.*

CHAPTER 5.—*Bail in Civil Cases.*

CHAPTER 6.—*Of Making Parties.*

CHAPTER 7.—*Of Abatement, Retraxit, etc.*

(a) Acts of 1863-4, pp. 132, 46.

* For further powers and duties of the Judges of the Superior Court, see Part 1, Title 5, Chapter 3,

CHAPTER I.

GENERAL PRINCIPLES.

SECTION.

3185. For every right, etc.
 3186. Action defined.
 3187. All distinctions of actions abolished
 3188. A civil action defined.
 3189. A penal action defined.
 3190. Demand—when required.
 3191. Claims of persons can not be joined

SECTION.

3192. Parties to actions on contracts.
 3193. Parties to actions for torts.
 3194. Tenant in common may sue alone.
 3195. Dates, etc., may be in figures.
 3196. Different claims may be joined.
 3197. When parties may sue separately.
 3198. A suit by an infant is not void.

§ 3185. For every right there shall be a remedy, and every Court having jurisdiction of the one, may, if necessary, frame the other. For every right there shall be a remedy.

§ 3186. An action is merely the judicial means of enforcing a right. An action. *Am. Law Rep. 725. 25 Ind. 419*

§ 3187. All distinctions of actions into real, personal and mixed are abolished. An action may be against the person, or against property, or both. Generally, a proceeding against the person binds the property also, and a proceeding against property without service on the person, binds only the particular property. Distinction of actions abolished.

§ 3188. A civil action is one founded on private rights, arising either from contract or tort. A civil action defined.

§ 3189. A penal action is one allowed in pursuance of public justice under particular laws. If no special officer is authorized to be the plaintiff therein, the State, or the Governor, or the Attorney or Solicitor General may be the plaintiff. A penal action defined and parties provided. *22 Ga 105, 12 Ga 475*

§ 3190. No demand is necessary to the commencement of an action except in such cases as the law or the contract prescribes. No demand necessary. *55 1967*

§ 3191. Distinct and separate claims of or against different persons, can not be joined in the same action. Against different persons.

§ 3192. As a general rule, the action on a contract, whether express or implied, or whether by parol, or under seal, or of record, must be brought in the name of the party in whom the legal interest in such contract is vested, and against the party who made it in person or by agent. Parties to actions on contracts. *1 Kelly 306*

§ 3193. An action for a tort must, in general, be brought in the name of the person whose legal right has been affected, and who was legally interested in the property at the time the injury thereto was committed, and against the party committing the Parties to actions for torts.

Chapter 1.—General Principles.

injury, either by himself, his servant, or agent in his employment.

§ 3194. A tenant in common need not join his co-tenant, but may sue separately for his interest, and the judgment in such case affects only himself.

A tenant in common may sue alone.

§ 3195. Dates and amounts in pleading may be set out in figures or Arabic numerals, and when a party signs a contract with the initials of his Christian name only, he may be sued in the same way.

Dates and amounts may be set out in figures.

§ 3196. All claims arising *ex contractu*, between the same parties, may be joined in the same action; and all claims arising *ex delicto* may in like manner be joined. The defendant may also set up, as a defense, all claims against the plaintiff of a similar nature with the plaintiff's demand.

Different claims may be joined.

§ 3197. Courts will not, in one suit, take cognizance of distinct and separate claims of different persons; but where the damage, as well as the interest is several, each party injured must, in that case, sue separately.

When parties must sue separately.

§ 3198. A suit commenced and prosecuted by an infant alone is not void, and although the suit is defective in wanting a guardian or next friend, the defect is amendable before verdict, and cured by verdict.

Suits by an infant not void.

CHAPTER II.

OF ATTACHMENTS.

ARTICLE 1.—*Of Issuing Attachments.*

ARTICLE 2.—*In what Manner, on what Property Executed, etc.*

ARTICLE 3.—*Proceedings on Garnishments.*

ARTICLE 4.—*Pleading and Defenses.*

ARTICLE 5.—*Replevy and Disposition of Property Attached.*

ARTICLE 6.—*Claim and Proceedings Therein.*

ARTICLE 7.—*Lien of Attachments, Judgments, and Executions.*

Article 1.—Issuing Attachments.

ARTICLE I.

OF ISSUING ATTACHMENTS.

SECTION.

3199. Grounds of attachment.
 3200. Affidavit.
 3201. Bond to be given.
 3202. Copartner may make oath, etc.
 3203. Issue by a Judge, Justice, etc.
 3204. Property in another County.
 3205. When returnable.
 3206. To whom directed.
 3207. Issue and levy on Sunday.

SECTION.

3208. When the debt is not due.
 3209. Joint contracts—may be attached.
 3210. Executors, administrators, etc.
 3211. Security or endorsers *vs.* principal.
 3212. May issue pending suit.
 3213. Foreign incorporations.
 3214. Bail may be attached.
 3215. Not void for want of form.
 3216. Affidavit, bond, and attachment.

§ 3199. Attachments may issue in the following cases:

Grounds of attachment.

1. When the debtor resides out of the State.
2. When he is actually removing, or about to remove, without the limits of the County.
2. When he absconds.
4. When he conceals himself.
5. When he resists a legal arrest.
6. When he is causing his property to be removed beyond the limits of the State.

§ 3200. Before process of attachment shall issue, the party seeking the same, his agents, or attorney at law, shall make an affidavit before some Judge of the Superior Court, Judge of the County Court, Justice of the Peace, or Notary Public, that the debtor has placed himself in some one of the positions enumerated in this Code, and also of the amount of the debt claimed to be due. When the affidavit is made by the attorney at law, or agent of the party, he may swear that the amount claimed to be due, is due according to the best of his knowledge and belief.

By whom affidavit may be made

Agent or attorney may swear.

§ 3201. The party seeking the attachment, before the same issues, shall also give bond with good security in an amount at least double the debt sworn to, payable to the defendant in attachment, conditioned to pay such defendant all damages that he may sustain, and also all costs that may be incurred by him in consequence of suing out the attachment in the event the plaintiff shall fail to recover in said case; which bond it shall be the duty of the magistrate or other officer before whom the affidavit is made to take, and where the affidavit is made by the agent or attorney at law of the plaintiff, such agent or attorney at law is hereby authorized to

Plaintiff must give bond and security.

Agent or attorney may give bond.

As to time of 13th 335

Article 1.—Issuing Attachments.

sign the name of the principal, who shall also be bound thereby in the same manner as though he had signed it himself.

§ 3202. When the debt for the recovery of which the attachment is sought, is due to a co-partnership, or is due to several persons jointly, it shall be lawful for any one of the co-partners or joint creditors, his agent or attorney at law, to make the affidavit, and give the bond as prescribed by this Code, and to sign the name of the other co-partners or joint creditors to said bond, and they shall be bound thereby in the same manner as though they had signed it themselves.

§ 3203. Affidavit being thus made and bond given, it shall be the duty of the officer before whom such affidavit is made and bond given, or any officer authorized so to do, to issue an attachment against the defendant, which may be levied on the property of the defendant, both real and personal, if to be found in this State.

§ 3204. When the plaintiff in attachment wishes to levy his attachment upon property in a different County from that in which the same is returnable, it shall be the duty of the magistrate or other officer issuing such attachment, upon the request of the plaintiff, his agent or attorney at law, to make out a copy or copies of the original attachment, bond, and affidavit, and certify the same, officially, to be a true copy or copies; and upon such copies being delivered to any officer to whom the same is directed, of the County where the property of the defendant is, it shall be the duty of such officer to levy forthwith the same upon the property of the defendant in such County, and to return the same, with his actings and doings entered thereon, to the Court to which the original attachment is returnable.

§ 3205. When the amount sworn to shall exceed the sum of fifty dollars, the attachment shall be made returnable to the next term of the Superior or County Court of the County where the defendant resides, or where he last resided, but if such Superior Court shall sit within twenty days, or such County Court shall sit within fifteen days next after issuing such attachment, it shall be made returnable to the next term of the Superior or County Court thereafter; and when the debt sworn to does not exceed the sum of fifty dollars, the attachments shall be made returnable to the next Justices' Court of the district in which the debtor resides, or last resided; but if the next Justices' Court shall sit within ten

§ 1890.

Co-partner,
agent, or at-
torney may
make affida-
vit.

Attachment
—who may
issue.

669 595.

Property
in a differ-
ent County
—how levied
upon.

Copies to
be sent to
the County
where the
property is.

Officer shall
levy and re-
turn.

Attach-
ments—
where re-
turnable.

Article 1.—Issuing Attachments.

days next after issuing such attachment, it shall be made returnable to the next Justices' Court thereafter, except when the defendant resides out of the State; and in that case, if the debt sworn to exceeds fifty dollars, the attachment may be made returnable to the Superior Court of any County in this State; and if it does not exceed fifty dollars, the attachment may be made returnable to a Justices' Court of any district of any County in this State.

When returnable to a Justice's Court.

When the defendant resides out of the State—how returnable.

§ 3206. Attachments returnable to the Superior and County Courts shall be directed to all and singular the Sheriffs and Constables of this State, and attachments returnable to the Justices' Courts shall be directed to all and singular the Constables of this State.

To whom directed.

§ 3207. Attachments may issue and be levied on Sunday when the plaintiff, his agent, or attorney at law shall swear, in addition to the oath prescribed by this Code, that he has reason to apprehend the loss of the debt, unless process of attachment do issue on Sunday, and shall also comply with the other provisions of this Code in relation to issuing attachments.

May issue on the Sabbath day.

Additional oath.

§ 3208. When the debt is not due, the debtor shall be subject to attachment in the same manner and to the same extent as in cases where the debt is due, except that where the debt does not become due before final judgment, execution upon the judgment shall be stayed until the debt is due.

When the debt is not due.

§ 3209. In cases of joint contractors and co-partners, where any one of them shall render himself liable to attachment according to law, an attachment may issue against him upon the plaintiff, his agent, or attorney at law complying with the previous provisions of this Code in relation to the issuing of attachments; and the proceedings against such joint contractors or co-partner shall be in all respects as in other cases of attachments, except that such attachment shall be levied only upon the separate property of such joint contractor or co-partner.

Joint contractors subject to attachment.

To be levied on separate property.

§ 3210. Process of attachment may issue against an administrator on an estate, or the executor of the last will and testament of any deceased person, as in other cases, when such administrator or executor shall be actually removing, or about to remove the property of said deceased person without the limits of any County of this State; *provided*, final judgment shall not be entered up against such administrator or executor until after the expiration of two years from the granting of letters of administration, or

May issue against an administrator, etc.

Judgment may be stayed.

Article 1.—Issuing Attachments.

letters testamentary, as the case may be; and in all cases of money demands, whether arising *ex contractu* or *ex delicto*, plaintiff shall have the right to sue out the attachment when the defendant shall have placed himself in such situation as will authorize a plaintiff to sue out attachment upon the plaintiff's complying with the law now of force in relation to issuing attachments.

§ 3211. In all cases where a person is surety or endorser upon an instrument of writing, and the principal shall become subject to attachment, according to the provision of Section 3199 of this Code, it shall be lawful for such surety or endorser, upon complying with the provisions of this Code in relation to the issuing of attachments, to have attachment against his principal; and the proceedings shall be, in all respects, the same as in other cases of attachment, according to the provisions of this Code, and the money raised by such attachments shall be paid to the person holding such instrument of writing. But if the surety or endorser has paid the debt, then the money raised upon such attachment, or so much thereof as will pay the amount the surety or endorser has paid, shall be paid to such surety or endorser; and in case the debt is not due at the time judgment is rendered against the principal, execution shall be stayed until the debt is due.

§ 3212. In all cases where the plaintiff has commenced suit for the recovery of a debt, and the defendant, during the pendency of such suit, shall become subject to attachment, agreeable to Section 3199 of this Code, the plaintiff, upon complying with the provisions of this Code in relation to the issuing of attachments, may have an attachment against the defendant, and all the proceedings in relation to the same shall be as hereinbefore prescribed in relation to attachments where no suit is pending. And a satisfaction of the judgment in the common law action shall satisfy the judgment in attachment, and a satisfaction of the judgment in attachment shall satisfy the judgment in the common law action.

§ 3213. Attachments may issue against incorporations not incorporated by the laws of this State, who are transacting business within the State, under the same rules and regulations as are by this Code prescribed in relation to issuing attachments and garnishments in other cases.

§ 3214. In all civil suits in which bail has been required, and

Article 1.—Issuing Attachments.

such bail has been given, and, pending the liability of said bail, he shall attempt to remove beyond the State or County in which such bail resided at the time the same was required, it shall be lawful for the party at whose suit bail was required to attach the property of said bail to answer the suit of the party suing out the same; *provided*, that said bail may discharge his property from said levy by delivering up the body of the principal according to the laws of this State.

Attachment
may issue
against bail
in certain
cases.

§ 3215. A substantial compliance in all matters of form shall be held sufficient in all applications for attachment, and in all attachments issued as provided by this Code.

A compli-
ance in sub-
stance suffi-
cient.

§ 3216. In all cases of attachment the form of the affidavit, bond, and attachment may be as follows:

Forms.

GEORGIA, }
— COUNTY. }

AFFIDAVIT.

Before me, the subscriber, a — in and for said County, — personally — and on oath says that — is indebted to him in the sum of —, and that the said —.

Affidavit.

Sworn to before me, —, this the — day of —, 18—.

GEORGIA, }
— COUNTY. }

BOND.

We, —, principal, and —, security, acknowledge ourselves bound unto — in the sum of — dollars, subject to the following conditions:

Bond.

That the said —, principal, is seeking an attachment against the said —, which is now about to be sued out, returnable to the — term of the — Court of the County aforesaid; now, if the said — shall pay all damages that the said — may sustain, and also all costs that may be incurred by him in consequence of suing out such attachment in the event that the said — shall fail to recover in said case, then this bond to be void.

Executed in presence of —, this — day of — 18—.

[L. S.]

[L. S.]

GEORGIA, }
— COUNTY. }

ATTACHMENT.

To all and singular the Sheriffs and Constables of said State: You are hereby commanded to attach and seize so much of the

Article 2.—In what Manner, and on what Property Executed.

Attachment. property of ——— as will make the sum of ——— dollars and all costs, and also to serve such summons of garnishment as may be placed in your hands, and that you make return of this attachment with your actings and doings entered thereon, to the ——— term of the ——— Court of said County, to which Court this attachment is hereby made returnable. Hereof fail not. Witness my hand and seal ———, this the ——— day of ——— 18—.

[L. S.]

ARTICLE II.

IN WHAT MANNER, ON WHAT PROPERTY EXECUTED, AND PROCEEDINGS THEREIN.

SECTION.

- 3217. Duty of officer to whom directed.
- 3218. Must make a return.
- 3219. Must be levied in order received.
- 3220. May be levied on property of def't.
- 3221. May be levied by garnishment.

SECTION.

- 3222. Shares or interest in incorporation.
- 3223. Transfer after levy void.
- 3224. Certificate of purchase.
- 3225. Vendor *vs.* vendee—sale of land.

§ 3217. It shall be the duty of any one of the officers to whom an attachment may be directed, as provided in Section 3206, Article I, to levy the same upon the property of the defendant that may be found in the County of which he is Sheriff or Constable; and when any attachment shall come into the hands of any officer of the County in which such attachment is returnable, and the defendant shall have removed his property beyond the limits of said County before such an attachment is executed, it shall be the duty of the officer having such attachment to follow such property into any County in the State, and levy the same, and bring the property back into the County where the attachment is returnable.

Duty of the officer to whom the attachment is directed.

If property is removed, etc.

§ 3218. It shall be the duty of the officer levying such attachment to return the same, with his actings and doings entered thereon, together with the affidavit and bond, to the Court to which the same is made returnable.

Attachment must be returned.

§ 3219. In all cases it shall be the duty of the officer levying attachments to levy them in the order in which they came into his hands, and it shall be his duty to enter upon the same, the year, month, day of the month, and hour of the day on which he made the levy.

Officer must levy, etc.

§ 3220. When an attachment has been issued by the proper officer, the same may be levied upon the property of the defendant, both real and personal, which may be found in the County.

May be levied on the property, etc.

Article 2.—In what Manner, and on what Property Executed, etc..

§ 3221. Service of the attachment, by serving process of garnishment, shall be as effectual for all purposes as though the attachment had been served by levying the same upon the property of the defendant.

May be levied by service of garnishment.

§ 3222. When the process of attachment shall issue against a party who shall have or own any interest or an amount of shares in any corporation in this State, the same may be attached in the following manner: The officer in whose hands the attachment is placed, shall endorse an entry thereon of his levy on the corporate shares or interest of the defendant, and shall forthwith serve a copy of the attachment so endorsed upon the president of the corporation, at the office of the company, or by leaving the same at the usual or most notorious place of doing the business of such company, which entry and service shall amount to, and be considered a seizure of said corporate interest or shares to all intents and purposes, and under an execution issued on such attachment, may be sold as in other cases of ordinary execution.

Shares or interest in any corporation, etc.

How levied upon and sold.

§ 3223. Any transfer by the defendant of the stock or interest so attached after the levy of such attachment, shall be void, and when an execution is issued, the said stock or interest shall be sold by the Sheriff, or his deputy, according to the provisions of this Code, to make bank and other stocks subject to executions.

Transfer after levy is void.

§ 3224. Certificates of purchase shall be granted by the officer selling as prescribed in cases of executions, and on presentation of such certificates to the proper officer of said corporation, it shall be his duty to make such transfer on his books, if necessary, and afford the purchaser such evidence of title to the stock purchased as is usual and necessary with other stockholders.

Officer selling must give a certificate.

Transfer.

Evidence of title.

§ 3225. In all cases of sale of lands, where the vendor has not executed a deed of conveyance to the purchaser for the same, but has given bond for titles, or other evidence of the contract, and the purchase money has not been paid, and the vendee shall become liable to attachment agreeable to the provisions of Section 3199 of this Code, attachment may issue against him at the instance of the vendor, upon complying with the provisions of this Code in relation to attachments; which said attachment shall be levied upon the land described in the bond, or other evidence of contract for titles, and the subsequent proceedings shall be, in all respects, as heretofore prescribed in this Code in relation to attachments; and it shall be lawful for the party bound by such bond, or other

Vendor may attach for purchase money.

How levied.

Article 3.—Proceedings on Garnishments.

Deed must be filed. contract for titles, to file in the Clerk's office of the Superior Court of the County where the land is situated, a good and sufficient deed of conveyance of said land to the obligee of said bond or other contract for titles; and when judgment is obtained upon such attachment, the execution issuing thereon may be levied upon said land, and the same be sold, and the money arising from said sale shall be appropriated to the payment of said judgment on the attachment, to the exclusion of any other attachment, judgment, or other debt of the defendant.

Lien of judgment.

ARTICLE III.

PROCEEDINGS ON GARNISHMENTS.

SECTION.

3226. How issued, directed, served, etc.
 3227. Garnishee residing out of County.
 3228. Garnishee failing to answer.

SECTION.

3229. Answering and admitting effects.
 3230. Plaintiff may traverse the answer.
 3231. Issue—how tried, etc.

§ 3226. In all cases where attachment may issue, it shall be the duty of the Magistrate, or other officer issuing the same, at the request of the plaintiff, his agent or attorney at law, to issue summons of garnishment, directed to any person that may be indebted to, or have property or effects of the defendant in their hands, requiring them to appear at the Court to which the attachment is made returnable, then and there to depose on oath what they were indebted to the defendant at the time of the service of said garnishment, or what property or effects of his they have in their hands, or had at the time of the service of said summons of garnishment; and it shall be the duty of the officer levying such attachment to serve such summons of garnishment.

Garnishment—how obtained.

Garnishee required to answer.

How served.

§ 3227. When the plaintiff, his agent, or attorney at law, shall desire to garnishee persons not residing in the County in which the attachment issues, it shall be the duty of the Magistrate issuing the same, at the request of the plaintiff, his agent, or attorney at law, to make out a copy of the affidavit, bond, and attachment, and certify the same to be a true copy; and upon the delivery of such copy to any Magistrate, or other officer who is authorized by law to issue an attachment, in the County of which the person sought to be garnisheed resides, it shall be the duty of such Magistrate, or other officer, to make out a summons of

When garnishee resides out of the County, etc.

Article 3.—Proceedings on Garnishments.

garnishment for such persons as he may be requested to do by the plaintiff, his agent, or attorney at law, requiring such persons to be and appear at the next Superior or County Court, or Justices' Court, of the County in which it issued, and depose in the manner prescribed by law; but if the next Court, as aforesaid, shall be held within less than ten days next after the issuing of said summons of garnishment, then the person garnished shall be required to appear and depose at the next Court thereafter; which said summons may be served by any officer authorized by law to levy an attachment, who shall return such certified copy, affidavit, bond, and attachment, to the Court as aforesaid, together with his actings and doings entered thereon.

By whom
to be served
and returned

§ 3228. When any person summoned as garnishee fails to appear, in obedience to the summons, and answer at the first term of the Court at which he is required to appear, the case shall stand continued until the next term of the Court; and if he should fail to appear and answer by said next term, the plaintiff may, on motion, have judgment against him for the amount of the judgment he may have obtained against the defendant in attachment, or so much thereof as shall remain unpaid at the time the judgment is rendered against the garnishee; and the Court may continue the case until final judgment is rendered against the defendant in attachment.

If the garnishee fails to answer, etc.

On further failure, etc.

Court may continue the garnishment

§ 3229. When the garnishee appears and answers that he is indebted to, or has property or effects in his hands belonging to the defendant in attachment, judgment shall be rendered against him in favor of the plaintiff for such acknowledged indebtedness, and the property and effects, whatever they may be, shall be delivered into the hands of the Sheriff or Constable as the case may be, and by order of the Court shall be by him sold, and the money arising from such sale shall be held subject to the order of the Court, and in case the garnishee fails to deliver over such property or effects to the officer as aforesaid, it shall be lawful for the Court to attach him as for contempt; the property and effects so surrendered and delivered into the hands of the officer as aforesaid, shall be sold at such time and place, and after such notice given, as the Court ordering the same shall direct.

If the garnishee admits effects

Property returned.

Failing to deliver property.

§ 3230. When the summons of garnishment is returnable to the Superior or County Court, and the plaintiff in attachment is not content with the answer of the garnishee, he may at the term of

Plaintiff may traverse the answer of garnishee.

Article 4.—Pleading and Defenses.

Issue—
how tried.

Either party
may appeal.

Plaintiff
may show
indebted-
ness of gar-
nishee.

Execution.

If the issue
is in a Jus-
tices' Court.

the Court to which the return is made, traverse the same, and the issue formed upon such traverse shall be tried at the same term by a Petit Jury, unless cause is shown for a continuance, and either party being dissatisfied with the finding of the said jury, may appeal as in cases at common law, and the same shall be tried and governed by the same rules and regulations as in other appeal cases. On the trial of said issue, it shall be competent for the plaintiff to show the amount of indebtedness of the garnishee, and the value of the property and effects not surrendered as aforesaid; and upon final judgment being rendered against said garnishee, the plaintiff in attachment shall have execution for the amount of such judgment and cost as at common law.

§ 3231. When the summons of garnishment is returnable to a Justices' Court, the issue formed upon the traverse as aforesaid, shall be tried by a jury in the same manner as appeal cases in a Justice's Court.

ARTICLE IV.

OF PLEADING AND DEFENSES.

SECTION.

- 3232. Declaration to be filed at first term.
- 3233. Plaintiff give defendant notice, etc.
- 3234. Defendant defend at any time, etc.
- 3235. May plead set-off not due.
- 3236. May traverse truth of pl'f's affidavit
- 3237. Traverse shall not delay judgment.

SECTION.

- 3238. Death of pl'ff—parties, how made.
- 3239. Death of def't—parties, how made.
- 3240. Pleadings amendable, etc.
- 3241. Judgment may be set aside.
- 3242. Interrogatories may be sued out.

Declaration
shall be filed
—when.

§ 3232. When the attachment has been returned to the proper Court, the subsequent proceedings shall be in all respects the same as in cases where there is personal service, and when the attachment is returnable to the Superior or County Court, the plaintiff shall file his declaration at the first term.

Ten days'
notice to de-
fendant.

§ 3233. The plaintiff, his agent, or attorney at law, may give notice in writing to the defendant of the pendency of such attachment and of the proceedings thereon, which shall be served personally on the defendant by the Sheriff, his deputy, or a Constable of the County to which said attachment is returnable, by giving him a copy of said notice, at least ten days before final judgment on said attachment, and returning said original notice with his service entered thereon to the Court in which said attachment is pending, which being done, the judgment rendered upon such at-

Judgment
shall bind all
property of
defendant.

Article 4—Pleading and Defenses.

attachment shall have the same force and effect as judgments rendered at common law; and no declaration shall be dismissed because the attachment may have been dismissed or discontinued, but the plaintiff shall be entitled to judgment on the declaration filed, as in other cases at common law, upon the merits of the case.

No declaration shall be dismissed.

Defendant may make his defense.

§ 3234. The defendant may appear by himself or attorney at law, and make his defense at any time before final judgment is rendered against him, and either party being dissatisfied with the verdict that may be rendered in the case, may enter an appeal.

Either party may appeal.

§ 3235. Any defendant against whom an attachment may issue for the recovery of a demand which is not due, under the provisions of Section 3208, Article I., may avail himself in his defense of any set-off pleadable by the laws of this State, notwithstanding such set-off may not be due at the time of suing out such attachment, or at the trial thereof; and if said set-off, so pleaded, shall exceed the plaintiff's demand, the defendant shall have judgment against the plaintiff for such excess as at common law, with a stay of execution until the time the said set-off so pleaded shall become due.

Defendant may plead a set-off not due.

Execution to be stayed.

§ 3236. In all cases of attachment the defendant may traverse the truth of the affidavit in relation to the ground upon which the attachment issued at the return of the attachment, and if said attachment is returnable to the Superior Court, the issue formed upon such traverse shall be tried by a jury at the same term, unless good cause is shown for a continuance; and either party being dissatisfied with the verdict of the jury may enter an appeal, and if the final verdict upon such issue shall be in favor of the defendant, said attachment shall be dismissed at the cost of the plaintiff. And if the attachment is returnable to a Justices' Court, the issue formed upon the traverse aforesaid shall be tried by a jury in the same manner as appeal cases in a Justices' Court.

May traverse the truth of plaintiff's affidavit.

Issue—how tried.

Either party may appeal.

Issue in a Justices' Court—how tried.

§ 3237. No traverse of the plaintiff's attachment, affidavit, or other proceeding of the attachment shall delay judgment on the declaration where personal service has been perfected, but judgment may be had thereon, subject to the rules of the common law, as well before the trial of the issue made on the attachment proceedings as afterward.

No traverse shall delay plaintiff.

Judgment may be had on the declaration.

§ 3238. In case either plaintiff or defendant shall die before final judgment is rendered in any case, and there is representation upon the estate of the defendant, parties shall be made in the

If either party die.

Article 4.—Pleading and Defenses.

On the
death of
plaintiff.

same manner as in cases where there is personal service. But if there is no known representation upon the estate of the defendant within this State, and the plaintiff shall die, his executor or administrator may, at any time after his qualification as such, cause to be issued by the Clerk of the Court, or Justice of the Peace, a *scire facias*, returnable to the next term of the Court after issuing the same, giving notice to the opposite party of his intention to be made a party in place of his deceased testator or intestate, which shall be posted up at the door of the Court House where such attachment is pending at least twenty days before the term at which such *scire facias* is made returnable; and upon affidavit being made by the executor or administrator of this being done, and said affidavit being filed among the papers in the case, said executor or administrator shall, on motion, be made a party, and the same proceed in his name.

Parties—
how made.

On the
death of
defendant.

§ 3239. When the defendant shall die, *scire facias* shall issue in the manner aforesaid after the expiration of twelve months from the death of the defendant, directed to the representative of the deceased defendant, notifying him of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same, which being posted as aforesaid, and affidavit made and filed as aforesaid, it shall be lawful for the plaintiff to proceed in the same manner as though the death of the defendant had not occurred, but the executor or administrator upon the estate may, at any time before final judgment upon the attachment, come in and be made a party, and defend in the same manner as his testator or intestate might have done.

Parties—
how made.

Attach-
ments and
returns
thereon
amendable.

§ 3240. The plaintiff in attachment shall have the right to amend his attachment, or bond, or declaration as in other cases at common law, and the levying officer shall have the right to amend his return by supplying any omissions or errors, and the Court before which the attachment shall be returned shall have power to order said amendments.

Judgment
may be set
aside for
fraud.

§ 3241. A judgment in attachment may be set aside in a Court of law upon an issue suggesting fraud or want of consideration, tendered by a judgment creditor of the defendant in attachment.

Interroga-
tories—how
sued out.

§ 3242. In cases of attachment and garnishment, interrogatories may be sued out and served as provided in other cases.

Article 5.—Replevy and Disposition of Property Attached.

ARTICLE V.

REPLEVY AND DISPOSITION OF PROPERTY ATTACHED.

SECTION.

3243. Defendant may replevy property.

3244. Foreign corporation may replevy.

SECTION.

3245. Perishable property not replevied.

§3243. When an attachment has been levied upon the property of a defendant, it shall be the duty of the officer levying the same to deliver the property so levied upon to the defendant, upon his giving bond, with good security, payable to the plaintiff in attachment, obligating themselves to pay the plaintiff the amount of the judgment and costs that he may recover in said case; in case the property levied upon shall be equal to or exceed the amount of the debt sworn to be due, in double the value of the property levied upon. When the property shall not exceed the amount of the debt claimed to be due, then in double the amount of the debt sworn to be due, and the officer taking said bond shall return the same with said attachment to the Court to which the same is made returnable, and it shall be lawful for the plaintiff to take judgment against the defendant and his securities upon said bond for the amount of the judgment he may recover in his said attachment case, in the same manner that by this Code judgment may be entered up in case of securities upon appeals.

Property levied on to be delivered to defendant on his giving bond.

The officer taking such bond shall return the same.

Judgment on bond—when allowed.

§3244. When an attachment shall be levied on the property of an incorporation not incorporated by the laws of this State, it shall be lawful for any agent of such incorporation to relieve the property levied on, or discharge the summons of garnishment that may issue, by giving bond to the levying officer payable to the plaintiff, conditioned to pay the amount that may be recovered in said case; which bond the levying officer shall return to the Court to which the attachment is made returnable, and judgment may be entered up in like manner against the principal and security upon said bond for the amount the plaintiff may recover against such corporation.

Property of a foreign corporation, etc

Judgment on bond—when allowed.

§3245. When the defendant fails to replevy the property, and the same remains in the hands of the levying officer, and is of a perishable nature, or liable to deteriorate in value from keeping, or there is expense attending the keeping of the same, (the same not being land); upon these facts being made plainly to appear to

Perishable property may be sold

Article 6.—Claims and Proceedings therein.

Sale to be
advertised.

Money held
subject to or-
der of Court.

a Judge of the Superior Court, or County Judge of the County in which the attachment is returnable, where the same is returnable to the Superior or County Court; or to a Justice of the Peace of the County where the same is returnable to a Justices' Court, it shall be their duty to order a sale of the property, which shall be at the usual place of holding Sheriff's sales of the County where such property may be, when the attachment is returnable to the Superior or County Court; and when the attachment is returnable to a Justices' Court at the usual place of Constable's sales of the district where the property may be, or at such other place as the Magistrate ordering said sale may direct; the time and place of holding such sale shall be advertised at the Court House, and at two other public places in the County where the same is to take place, at least ten days before the day of sale. And when the attachment is returnable to a Justices' Court, it shall be advertised at the Court House door of the district in which the attachment is returnable, and the money arising from such sale shall be held by the officer making the same, subject to the order of the Court to which the attachment is returnable.

ARTICLE VI.

OF CLAIMS AND PROCEEDINGS THEREIN.

SECTION.

- 3246. How interposed and returned.
- 3247. Shall be tried as other claims.
- 3248. Claimant, his agent or attorney, etc.

SECTION.

- 3249. Suit on forthcoming bond by officer.
- 3250. Plaintiff *vs.* claimant for damages.
- 3251. When claim may be interposed.

Claims—
how inter-
posed.

Claimant
must make
oath and
give bond.

§3246. When property shall be levied on by virtue of an attachment, and the same is claimed by any person not a party to such attachment, it shall be the duty of the person claiming the same, his agent or attorney at law, to make oath before some person authorized by law to administer an oath, that the property levied on is the property of the claimant, and is not subject to such attachment according to the best of his knowledge and belief, and said claimant shall give bond with good security, payable to the plaintiff in attachment, in a sum at least equal to double the value of the property claimed, to be judged of by the levying officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property may assess against him, in

Article 6.—Claims and Proceedings therein.

case it should be made to appear that such claim was made for the purpose of delay; and in case the claim is interposed by the agent or attorney at law of the claimant, such agent or attorney at law shall have power to sign the name of the claimant to the bond, and such claimant shall be bound in the same manner as though he had signed it himself. It shall be the duty of such officer taking such affidavit and bond, to return the same to the Court to which the attachment is returnable, unless the property levied on should be real estate; in which case, it shall be his duty to return the same to the Superior Court of the County where the land lies.

Agent or attorney may give bond.

Returns—where made.

§ 3247. The claim shall be tried in the same manner and subject to the same rules and regulations as are prescribed by law for the trial of other claims in the Court to which it is returned.

How tried.

§ 3248. The claimant, his agent, or attorney at law, may give bond, with good security, payable to the levying officer, in a sum equal to double the value of the property claimed, the value to be judged of by the levying officer, conditioned to deliver such property at the time and place of sale, provided the same should be found subject to the attachment; and upon the delivery of such bond to the levying officer, it shall be his duty to deliver such property to the claimant, his agent, or attorney at law, and it shall be the duty of the levying officer to return such bond, together with the affidavit and claim bond, to the Court to which such attachment is returnable; and when said claim is interposed by the agent, or attorney at law, of the claimant, such agent, or attorney at law, shall have power to sign the name of the claimant to the bond, who shall be bound thereby in the same manner as though he had signed it himself.

The claimant, his agent or attorney may replevy.

§ 3249. Upon the failure of the claimant to deliver such property, according to the conditions of said bond, the levying officer may immediately sue the claimant and security upon the bond, and recover the full value of the property claimed, and also all damages, costs, and charges, that the plaintiff may have sustained in consequence of the failure of the claimant to deliver said property.

On failure of claimant to deliver, etc.

§ 3250. In cases where the claimant shall deliver the property, and upon selling the same a sufficient amount shall not be raised to pay the debt and costs of the plaintiff, it shall be lawful for the plaintiff to institute suit against the claimant and his securities upon his said bond, and to recover the full value of the hire

May be sued for hire or use of property.

*Amended Act 1873
Page 61.*

Article 7.—Lien of Attachments, Judgments, and Execution.

or use of the property while the same has been in the possession of the claimant, and also full damages for any deterioration of the value of the property, by use or otherwise, while the same has been in the possession of the claimant, provided such recovery shall not exceed the amount of the debt that may remain due from the defendant in attachment to the plaintiff.

Claim may be interposed § 3251. In cases of attachment, a claim may be interposed either before or after judgment.

ARTICLE VII.

OF LIEN OF ATTACHMENTS, JUDGMENTS, AND EXECUTION.

SECTION.	SECTION.
3252. Defendant's property bound—when	3254. Money raised—how appropriated.
3253. Binds property levied upon only.	3255. Lien of attachments, etc.

When judgment binds defendant's property. § 3252. When the defendant has given bond and security, as provided in Section 3243 of this Code, or when he has appeared and made defense by himself or attorney at law, or when he has been cited to appear, as provided in Section 3233 of this Code, the judgment rendered against him in such case shall bind all his property, and shall have the same force and effect as when there has been personal service, and execution shall issue accordingly, but it shall be first levied upon the property attached. In all Shall only bind property levied on. other cases, the judgment on the attachment shall only bind the property attached, and the judgment shall be entered only against such property.

Executions must issue on all judgments. § 3253. After the judgment has been obtained in any case of attachment, execution shall issue, as in cases at common law, which execution shall be levied in the same manner as executions issuing at common law, and the proceedings, in all respects, shall be the same, except that when the judgment only binds the property levied on by the attachment, as aforesaid, the execution shall be issued against such property only, and that property only shall be levied on and sold.

Money raised—how applied. § 3254. All money raised by the sale of defendant's property, or otherwise, by virtue of the provisions of this Code in relation to attachments, shall be paid over to the creditors of the defendant, according to the priority of the lien of their judgments, saving only that as between attaching creditors, the attachment

Article 1.—General Provisions.

first levied shall be first satisfied, to the entire exclusion of any attachment of younger levy.

§ 3255. The lien of attachment is created by the levy, and not the judgment on the attachment; and in case of a conflict between attachments, the first levied shall be first satisfied; but in a contest between attachments and ordinary judgments, or suits, it is the judgment, and not the levy, which fixes the lien.*

Lien of attachments—
how created.

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CHAPTER III.

PETITION AND PROCESS.

ARTICLE 1.—*General Provisions.*

ARTICLE 2.—*Particular Cases.*

ARTICLE I.

GENERAL PROVISIONS.

SECTION.

- 3256. Suits—how commenced.
- 3257. Time of filing to be indorsed on writ.
- 3258. Process to be attached if not waived.
- 3259. Appearance and pleading, etc.
- 3260. If the Judge be dead or disabled.
- 3261. Process and service may be waived.
- 3262. To be filed twenty days before Court
- 3263. Must be served fifteen days.

SECTION.

- 3264. Entry of Sheriff may be traversed.
- 3265. Defendants residing out of County.
- 3266. If no Sheriff or Clerk be elected.
- 3267. If process be delivered too late.
- 3268. If the Sheriff is a party.
- 3269. Formal defects do not vitiate.
- 3270. No special pleadings allowed.

§ 3256. Ordinary suits in the Superior Court shall be by petition to the Court, signed by the plaintiff or his counsel, plainly, fully, and distinctly setting forth his charge or demand, and no want of form shall be cause of delay, if this article is substantially complied with.†

Suits—how
commenced.

§ 3257. Upon such petition the Clerk shall indorse the date of its filing in office, which shall be considered the time of the commencement of the suit.

Time of
filing to be
indorsed.

§ 3258. To such petition the Clerk shall annex a process (unless

* As to attachments, garnishments, claims, and other like proceedings in the County Court, see COUNTY COURT.

† As to mode of commencing suits in the County Court, see Sections 282-3.

Article 1.—General Provisions.

Process to be attached, unless waived. the same is waived), signed by the Clerk or his deputy, and bearing test in the name of a Judge of the Court, and directed to the Sheriff, or his deputy, requiring the appearance of the defendant at the return term of the Court.

Appearance and pleading cures defects § 3259. Appearance and pleading shall be a waiver of all irregularities of the process, or of the absence of process, and the service thereof.

If the Judge be dead, etc. § 3260. If the Judge in whose name the process bears test is dead, or otherwise disqualified at the time, the process shall be good and amended on motion.

Process and service may be waived. § 3261. The defendant may acknowledge service and waive process, provided the same be in writing, signed by the defendant, or some one authorized by him.

To be filed twenty days before the sitting of Court. § 3262. The original petition shall be deposited in the Clerk's office at least twenty days before the term to which it is returnable; and if delivered within the twenty days the Clerk shall make the same returnable to the next term thereafter.

Original and copy to be delivered to the Sheriff. § 3263. The Clerk shall deliver the original petition, with process annexed, together with a copy of the petition and process for each defendant, to the Sheriff, or his deputy, who shall serve such copy upon each defendant residing in the County at least fifteen days before the first day of the term, and within five days from the time of receiving the same, and make an entry of such service upon the original petition, and return the same to the Clerk. Leaving a copy at the defendant's residence shall be a sufficient service.*

Entry of the Sheriff may be traversed. § 3264. The entry of the Sheriff, [or any other officer of the Court,] (a) or his deputy may be traversed by the defendant at the first term after notice of such entry is had by him, and before pleading to the merits; but this shall not deprive the defendant of his right of action against the Sheriff for a false return.

When defendants reside out of the County. § 3265. If any of the defendants reside out of the County, the Clerk shall issue a second original and copy for such other County, or Counties, and forward the same to the Sheriff, who shall serve the copy and return the second original, with his entry thereon, to the Clerk of the Court from which the same issued.

§ 3266. If any County shall refuse or neglect to elect a Sheriff

* As to service of process against insurance companies, express companies, and banks, see Sections 3332, 3334, 3337.

(a) Acts of 1866, p. 23.

Article 1.—General Provisions.

or Clerk for sixty days after a vacancy shall have occurred, suitors may apply to any Clerk or Sheriff of an adjoining County, and have the requisite duty performed by them, and their acts shall be as valid as if they were officers of such delinquent County.

If no Sheriff or Clerk be elected.

§ 3267. If the process is delivered to the Sheriff, or his deputy, too late for service within the time specified, he shall return the same, with an entry, stating the truth of the case, and if the defendant can not be found, and does not reside within the County, the Sheriff shall make return of the fact in the same manner.

If process be delivered too late.

§ 3268. If the Sheriff is a party to the cause, the process shall be directed to the Coroner of the County, and to the Sheriffs of the adjoining Counties, and may be served by either, as convenience may suggest.

If the Sheriff is a party, etc.

§ 3269. No technical or formal objections shall invalidate any petition or process, but if the same substantially conforms to the requisitions of this Code, and the defendant has had notice of the pendency of the cause, all other objections shall be disregarded; *provided* there is a legal cause of action set forth as required by this Code.

Petition or process not affected by formal objections.

§ 3270. No special pleadings shall be admitted at law in the Superior Courts, and every case shall go to the jury and be tried upon the petition, process, and answer alone, and no non-suit shall be awarded when the cause of action is substantially set forth in the declaration for any formal variance between the allegations and the proof.

Special pleadings not admitted.

No non-suit shall be allowed.

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ARTICLE II.

PARTICULAR CASES.

SECTION 1.—*Against Joint, and Joint and Several Contractors.*

SECTION 2.—*In Ejectment.*

SECTION 3.—*Against Corporations.*

SECTION 4.—*Against Trustees.*

SECTION 5.—*Against Executors, Administrators, and Guardians.*

SECTION 6.—*Particular Forms.*

Section 1.—Against Joint, and Joint and Several Contractors.

SECTION I.

AGAINST JOINT, AND JOINT AND SEVERAL CONTRACTORS.

SECTION.

3271. Joint contractors, etc.
 3272. When a note is signed by two, etc.
 3273. Against co-partners.
 3274. When two or more are sued, etc.

SECTION.

3275. Partnership property, etc.
 3276. If several are sued, etc.
 3277. A maker and indorser, etc.
 3278. Suit on plaintiff's bond.

Joint contractors may be sued in the County where either reside.

§ 3271. In all cases where a person desires to institute a suit upon any bond, note, or other written obligation, subscribed by several persons who reside in different Counties, such person shall have his option to institute his suit in either of said Counties, and the process shall be issued, served, and returned as provided in this Code, and on such return the plaintiff may proceed as in other cases.

Representative of obligor may be sued, etc.

§ 3272. Where any person shall be in possession (in his own right, or in any other capacity,) of any note, bill, bond or other obligation in writing, signed by two or more persons, and one or more of the persons, whose names are so signed as aforesaid, shall die before the payment of the money, or the compliance with the conditions of said bond, or obligation in writing, the person holding such bill, bond, note, or other obligation in writing, shall not be compelled to sue the survivors alone, but may at his discretion sue the survivor, or survivors, or the representatives of such deceased person, or persons, or survivor, or survivors, in the same action with the representative, or representatives of such deceased person, or persons; *provided* nothing herein contained shall authorize the bringing of an action of any kind, whatever, against the representative, or representatives of any estate, or estates, until twelve months after the probate of the will, or the granting of letters of administration on such estate, or estates.

Twelve months allowed.

Includes co-partners.

§ 3273. The preceding Section shall be so construed as to embrace debts against co-partners, as well as against joint or joint and several contractors.

Several joint co-partners sued in the same action, etc.

§ 3274. When two or more joint contractors, or joint and several contractors, or co-partners are sued in the same action, and service shall be perfected on one or more of said contractors or co-partners, and the officer serving the writ shall return that the rest are not to be found, it shall and may be lawful for the plaintiff to proceed to judgment and execution against the defendants

Section 1.—Against Joint, and Joint and Several Contractors.

who are served with process in the same manner as if they were the only or sole defendants, and if either of the defendants die pending such action, his representative may be made a party, and the case proceed to judgment and execution as in other cases against the representatives of deceased persons.

On the death of one, parties may be made.

§ 3275. Judgments so obtained shall bind, and execution may be levied on the joint or co-partnership property, and also the individual property, real and personal, of the defendant or defendants who have been served with a copy of the process, but shall not bind or be levied on the individual property of the defendant or defendants who are not served with a process.

Judgments bind co-partnership property, etc.

§ 3276. In all cases against joint obligors or promisors, any one or more of the parties may plead infancy; if such plea be sustained, the action shall not abate, but the Court shall award judgment as in cases of non-suit, in favor of the party or parties so pleading, and permit the plaintiff to proceed against the other defendant or defendants to said suit, without further delay or costs.

If several are served, the plea of infancy, etc.

§ 3277. In case a maker and endorser of a promissory note reside in different Counties, the same may be sued in the same County where the maker resides; and a copy of the petition and process served on the indorser residing out of the County in which the suit may be commenced, as provided in case of joint obligors and promisors shall be deemed sufficient service.

When the maker and indorser of a promissory note reside in different Counties, etc.

§ 3278. When a person who has been a defendant in attachment desires to sue the plaintiff for damages, and the plaintiff shall not reside in this State, it shall be sufficient to serve a copy of the petition and process on the security to the bond given by the plaintiff, and said action may proceed against both principal and security.

Suit on attachment — bond of plaintiff.

SECTION II.

IN EJECTMENT.

SECTION.

3279. Ejectment for land, etc.
3280. Count for mesne profits.
3281. No separate action for.
3282. Ejectment by one joint owner alone.
3283. When several claimants, etc.
3284. True claimant—how made defend't.

SECTION.

3285. Defendant may disclaim title, etc.
3286. Judgment shall be conclusive, etc.
3287. Damages in second suit.
3288. Co-defendant—who may be.
3289. The consent rule may be, etc.
3290. Recovery on prior possession.

§ 3279. In all cases where any person residing in one County

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Section 2.—In Ejectment.

Land divided by County lines, etc.

whose plantation or land extends over the line into an adjoining County, and there is no one upon whom service in an action of ejectment can be legally perfected in the County where such land may lie, it shall be lawful for the Clerk of the Superior Court of the County wherein such land may lie, to issue process in behalf of the plaintiff against the defendant, which process shall be directed to the Sheriff of the County wherein such land may lie, and such Sheriff shall serve the same, and such service shall be good and valid.

Mesne profits—how recovered.

§ 3280. The plaintiff in ejectment may add a count in his writ or declaration, and submit the evidence to the jury, and recover by way of damages all such sums of money to which he may be entitled by way of *mesne* profits, together with the premises in dispute. The count for *mesne* profits may be in the name of the nominal or real plaintiff in the action.

Mesne profits—no separate suit for.

§ 3281. No plaintiff in ejectment shall have and maintain a separate action in his behalf for the recovery of *mesne* profits which may have accrued to him from the premises in dispute.

Joint owner may sue alone.

Effect of the judgment.

§ 3282. Any joint tenant, tenant in common, or other person having a part interest in lands or tenements, may have and maintain an action of ejectment or trespass for the recovery of such lands or tenements, or for an injury thereto, without joining with him any other person as plaintiff; but the judgment in such case shall not affect the rights of those interested in such lands or tenements who are not parties to the suit.

When several claimants can not join.

§ 3283. When several persons claim several parcels of land under distinct titles, and do not sustain to each other the relation of landlord and tenant, a joint action of ejectment can not be maintained against them, nor can a joint or several recovery be had in such action, either for the premises or *mesne* profits.

True claimant made defendant.

§ 3284. A plaintiff in ejectment may in all cases make the true claimant defendant by serving a copy of the pending action upon him, and the person so notified shall be bound by the judgment.

Defendant may disclaim.

§ 3285. A defendant in ejectment may at the first term come in and disclaim any claim of title, or right of possession; and after such disclaimer is filed, such defendant shall not be liable for any future cost.

Judgment conclusive.

§ 3286. A judgment in ejectment shall be conclusive as to the title between the parties thereto, unless the jury find for the plaintiff less than the fee.

Not to be in this case 3d Gn 167

Section 2.—In Ejectment.

§ 3287. [On a second suit between the same parties, involving titles to land, the jury shall have the right to determine whether said action has any real merit, and if none, they shall have the power to determine what amount of damage the defendant shall have sustained by and on account of said last mentioned suit, and shall return the same in their verdict, on which judgment may be rendered, and *feri facias* issue, as in other cases involving moneys.] (a)

Damage in second suit if without merit.

§ 3288. A previous warrantor of the title to the land in dispute may be a co-defendant in an action of ejectment, provided he would be answerable in damages in case of eviction.

Co-defendant — who may be.

§ 3289. The consent rule in ejectment shall always be considered as filed, and admits lease, entry and ouster. The fictitious forms in pleading in ejectment shall be sufficient.

The consent rule.

§ 3290. A plaintiff in ejectment may recover the premises in dispute upon his prior possession alone, against one who subsequently acquires possession of the land by mere entry, and without any lawful right whatever.

Plaintiff may recover on his prior possession—when.

SECTION III.

AGAINST CORPORATIONS AND OTHER COMPANIES.

SECTION.

- 3291. Members of corporations, etc.
- 3292. Railroad companies—liability of.
- 3293. Process against corporations.
- 3294. How served by publication.
- 3295. Notice to stockholders.

SECTION.

- 3296. Execution—property subject.
- 3297. Presiding officer failing to disclose.
- 3298. President or stockholder defend.
- 3299. Illegality to execution, etc.
- 3300. Foregoing provisions cumulative.

§ 3291. In all suits against the members of a private association, joint stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of such member or members, pro-

Members of joint stock companies corporations etc. — how sued.

(a) Acts of 1855-6, p. 221.

Section 3.—Against Corporations and other Companies.

vided the same does not exceed the amount of the plaintiff's debt against such association, company, or corporation; and if it exceed such debt, then so much only as will be sufficient to satisfy such debt.

§ 3292. In all cases where the person or property of an individual may be injured, or such property destroyed, by the carelessness, negligence, or improper conduct of any railroad company, or officer, agent, or employee of such company, in or by the running of the cars or engines of the same, such company shall be liable to pay damages for the same to any one whose property or person may be so injured or destroyed, notwithstanding any by-laws, rules, or regulations, or notice, which may be made, passed, or given, by such company, limiting its liability.

§ 3293. Service of all bills, subpoenas, writs, attachments, and other original process necessary to the commencement of any suit against any corporation in any Court of Law or Equity, except as hereinafter provided, may be perfected by serving any officer or agent of such corporation, or by leaving the same at the place of transacting the usual and ordinary public business of such corporation, if any such place of business then shall be within the jurisdiction of the Court in which said suit may be commenced. The officer shall specify the mode of service in his return.

§ 3294. In all cases where any corporation shall have no public place for doing business, or shall have no individual in office upon whom service of writs or process may be perfected within the knowledge of any party, complainant either in law or equity, the said complainant may make an affidavit that the said corporation has no public place of doing business, or has no individual in office upon whom service of writs or process may be perfected, within the knowledge of said complainant, and such affidavit being filed in the Clerk's office of the Court to which the said writ may be made returnable, the Clerk of the said Court shall issue a citation to the said defendants to be and appear at the said Court, to answer the complaint; which citation shall be published once a week for three weeks prior to the Court to which the said complaint may be returnable, in some newspaper published in the County in which suit is brought. If no paper is published therein, then in the one nearest thereto; and such advertisement shall be deemed and held a service upon such corporation for all purposes either in law or equity, and any copy of the newspaper con-

Railroad
companies
liable for
the miscon-
duct of offi-
cers.

Service of
process—
how perfect-
ed.

Officer
must state
how served.

When and
how service
may be per-
fected by
publication.

Section 3.—Against Corporations and other Companies.

taining said publication shall be received in any of the Courts as sufficient evidence of such service.

§ 3295. Plaintiffs or complainants, within one month after the institution of any suit or suits, at law or equity, against any corporation, joint stock or manufacturing company, may publish once a week, for four successive weeks, in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint stock or manufacturing company, for the purposes hereinafter mentioned.

Notice to stockholders and effect of.

§ 3296. When notice has been given as provided in the preceding Sections, and a judgment or decree has been obtained against any corporation, joint stock or manufacturing company, where the individual or private property of the stockholders is bound for the whole or any part of the debts of said incorporation, joint stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and tenements, of said corporation, joint stock or manufacturing company; and upon the return thereof by the proper officer, with the entry thereon of "no property to be found," then and in that case the Clerk, or other officer, upon an application of the plaintiff, his agent, or attorney, accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their ratable part of the said debt, and cost of suit, in proportion to their respective shares, or other liabilities under their charter of incorporation.

Judgment or decree.

Execution—how issued and property subject thereto.

§ 3297. It shall be the duty of the president or presiding officer of such incorporation, joint stock or manufacturing company, by whatever name he may be designated, upon application of the plaintiff, his agent, or attorney, forthwith to give a certificate, under oath, of the stockholders in said company, and the number of shares owned by each at the time of the rendition of judgment against said company; and if, upon application by the plaintiff, his agent, or attorney, the president, or officer aforesaid, shall refuse to give a certificate as aforesaid, or shall abscond or conceal himself, to avoid giving the same, the plaintiff, his agent, or attorney, may make oath of such refusal, and the Clerk, or other officer, shall issue an execution against such president or presiding officer, as aforesaid, for the amount of principal, interest, and cost of said suit.

President or presiding officer bound to give the names, etc.

Execution may issue against the president.

Section 4.—Against Trustees.

§ 3298. If the president, or other officer of said corporation, joint stock, or manufacturing company, shall fail or refuse to defend said suit or suits brought as aforesaid, any one of the stockholders of the said company shall be permitted to plead to and defend the same in as full and ample manner as said company, in its corporate capacity, could or might do.

The president may defend suit.

§ 3299. In a judgment against a corporation, joint stock, or manufacturing company, under the provisions of this Code, the defendant, or defendants in execution shall be entitled to an illegality under the same rules, regulations, and restrictions as defendants are in other cases.

Illegality of execution.

§ 3300. The preceding Sections in relation to proceedings against corporations, joint stock and manufacturing companies shall be understood and construed as cumulative of the common law.

Cumulative only.

SECTION IV.

A G A I N S T T R U S T E E S .

SECTION.

- 3301. Claim against trust estates.
- 3302. Sued in Superior Court—when.
- 3303. Party defendant.

SECTION.

- 3304. Sued in Justices' Court—when.
- 3305. The trust estate bound by judgment
- 3306. Execution must specify property.

Claims against a trust estate, etc.

§ 3301. Any person having a claim against any trust estate for services rendered to said estate, or for articles, or property, or money furnished for the use of said estate, or where a Court of Equity would render said estate liable for the payment of said claims, may collect and enforce the payment of such claim in a Court of Law.

How and where sued, etc.

§ 3302. The person having such claim as provided in the previous Section, if the same exceeds the sum of fifty dollars, may file his petition, setting forth the grounds of such claim, and also how and in what manner said estate is liable for the payment of said claims, and also setting forth the name or names of the trustees and the *cestui que trust*, which petition shall be filed in the office of the Clerk of the Superior Court under the same rules and regulations as in ordinary cases at common law, and the subsequent proceedings shall be, in all respects, the same.

Party defendant.

§ 3303. If there is no trustee, or he is a mere naked trustee and non-resident in the County, the *cestui que trust* shall be made

Section 5.—Against Executors, Administrators, and Guardians.

the defendant, and the proceedings shall be, in all respects, the same as when the trustee is defendant.

§ 3304. When the claim does not exceed the sum of fifty dollars, suit may be brought in a Justices' Court, under the same rules and regulations as in ordinary suits in those Courts, saving only that the summons shall set forth how and in what way said trust estate is liable for the payment of said claim; and the judgments rendered in a Justices' Court shall have the same force and effect as is hereinafter prescribed in relation to judgments rendered in the Superior Court. How and where sued, etc.

§ 3305. The judgment thus rendered shall impose no personal liability on the trustee, or in any way render his property liable for the payment of the same; but said judgment shall only bind such trust estate, and execution shall issue accordingly. Trust estate only bound.

§ 3306. All executions issued upon judgments rendered under the provisions of the five preceding Sections shall specify in the body of the execution the property upon which the same is to be levied, and it shall be levied on no other property. Execution must specify property.

SECTION V.

AGAINST EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SECTION.

3307. Execution returned *nulla bona*.
3308. Executor, etc., failing to settle.
3309. Guardian failing to settle.

SECTION.

3310. One or more sureties may be sued.
3311. Property of principal to be exhaust'd.
3312. Service perfected on execution, etc.

§ 3307. Upon the rendition of a judgment in favor of a party against an executor or administrator upon any liability of the deceased, and a return of *nulla bona* by the Sheriff, or other officer authorized to make the same, the said party may at once proceed to sue upon the bond of the executor or administrator, and may recover judgment against the principal and his sureties in the same action, and if the principal has removed beyond the limits of this State, or has departed this life, or has no legal representative, then he may sue the sureties on his bond. Execution returned *nulla bona*

§ 3308. When any executor or administrator shall fail to settle and account with any distributee or legatee of the estate he represents, such distributee or legatee may institute his suit upon the bond of such representative in the first instance, and may re- Principal failing to settle with legatee, etc.

Section 5.—Against Executors, Administrators, and Guardians.

cover judgment against the principal and his sureties without a suit against the executor or administrator in his representative character.

§ 3309. When any guardian shall fail or refuse to settle and account with his ward upon his coming of age, such ward may institute his suit in the first instance against his guardian and sureties without first suing his guardian.

A ward may sue his guardian.

One or more sureties may be sued in the first instance.

§ 3310. When any executor, administrator, or guardian shall remove from this State, or shall place himself in such situation as by the provisions of this Code an attachment would lie against a debtor, or if such executor, administrator or guardian, is dead, and his estate unrepresented, it shall and may be lawful, for any party in interest, or any person having demands against such executor, administrator, or guardian in such representative character, to institute his suit against the sureties, or any one or more of them, upon the bond of such executor, administrator, or guardian in the first instance without first obtaining a judgment against such executor, administrator, or guardian in his representative character.

Property of principal first to be exhausted.

§ 3311. When judgment shall be obtained against principals and sureties, as provided in the four preceding Sections, the property of the sureties shall not be levied upon until that of the principal shall be exhausted, which may be evidenced by a return of *nulla bona*.

How service may be perfected on administrator, etc.

§ 3312. In all cases where there are two or more executors or administrators, and one or more of such executors or administrators shall remove without the limits of this State, service of any writ or process upon those remaining in the State shall be as effectual and complete, for all purposes whatever, as though service had been made upon all such executors or administrators.

SECTION VI.

PARTICULAR FORMS.

SECTION.

- 3313. Form for the recovery of real estate.
- 3314. For recovery of personal property.
- 3315. For recovery on a note, etc.
- 3316. For recovery on open account.
- 3317. Form of an action on a judgment.
- 3318. For breach of warranty.

SECTION.

- 3319. For words.
- 3320. All suits for slander, etc.
- 3321. May accompany the words, etc.
- 3322. Forms apply against executors, etc.
- 3323. Actions heretofore commenced.
- 3324. Abstract of title.

Section 6.—Particular Forms.

§ 3313. The form of a declaration for the recovery of real estate and *mesne* profits may be as follows—to wit:

Form for
the recovery
of real estate.

GEORGIA, }
_____ COUNTY, } *To the Superior Court of said County.*

The petition of A. B. sheweth that C. D., of said County, is in possession of a certain tract of land in said County, (here describe the land) to which your petitioner claims title; that the said C. D. has received the profits of said land since the — day of —, 18—, of the yearly value of — dollars, and refuses to deliver said land to your petitioner, or to pay him the profits thereof: wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next Superior Court to be held in and for said County, to answer your petitioner's complaint.

§ 3314. The form of a declaration for the recovery of personal property may be as follows—to wit:

For the recovery of
personal
property.

GEORGIA, }
_____ COUNTY. } *To the — Court of said County.*

The petition of A. B. sheweth that C. D. of said County is in possession of a certain (here describe the property) of the value of — dollars, to which your petitioner claims title; that the said C. D. refuses to deliver the said — to your petitioner, or to pay him the profits thereof: wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next — Court to answer your petitioner's complaint.

In suits brought under this form, the verdicts and judgments may be the same as in actions of trover.

§ 3315. The form of an action to recover money on a note, bill, bond, receipt, or written promise of any description, by adding a copy of which, with the indorser's name (if any), and the credits thereon, and when the action is on a bond, the breach from which arises, the right of action shall be set out plainly, may be as follows—to wit:

For the recovery of
money on
note, etc.

GEORGIA, }
_____ COUNTY. } *To the — Court of said County.*

The petition of A. B. sheweth that C. D., of said County, is indebted to him in the sum of — dollars, besides interest, on a —, dated —, and due —, which said C. D. re-

Section 6.—Particular Forms.

fuses to pay: wherefore, your petitioner prays process may issue requiring the said C. D. to be and appear at the next ——— Court for said County, to answer your petitioner's complaint.

For recovery of money on open account.

§ 3316. The form of an action on an account may be as follows—to wit:

GEORGIA, }
—— COUNTY. } *To the —— Court of said County.*

The petition of A. B. sheweth that C. D., of said County, is indebted to your petitioner ——— dollars, on an account, as will fully appear by reference to a bill of particulars hereto annexed, which account the said C. D. refuses to pay: wherefore, your petitioner prays process may issue requiring the said C. D. to be and appear at the next ——— Court, to answer your petitioner's complaint.

On a judgment.

§ 3317. The form of an action to recover money on a judgment may be as follows—to wit:

GEORGIA, }
—— COUNTY. } *To the —— Court of said County.*

The petition of A. B. sheweth that C. D., of said County, is indebted to your petitioner the sum of ——— dollars, besides interest, on a judgment obtained by your petitioner against the said C. D., at a (name the Court) held on the —— day of ——, 18—, in the (County, district, or town,) of ——, in the State of ——, as will fully appear by reference to an exemplification of the proceedings in said case; that the said judgment is unsatisfied, and that the said C. D. neglects to pay the same: wherefore, your petitioner prays process may issue requiring the said C. D. to be and appear at the next ——— Court to be held for the County of ——, then and there to answer the plaintiff's complaint.

Breach of warranty.

§ 3318. The form of an action for a breach of warranty in a deed may be as follows—to wit:

GEORGIA, }
—— COUNTY. } *To the —— Court of said County.*

The petition of A. B. sheweth that C. D., of said County, is indebted to him in the sum of ——— dollars, for this: that on the —— day of ——, 18—, the said C. D. executed to your petitioner a warranty deed to a certain tract of land (here de-

Section 6.—Particular Forms.

scribe the land), for the sum of ——— dollars, paid by your petitioner to the said C. D.; that your petitioner has been evicted from said lot of land, and that the said C. D. refuses to indemnify your petitioner for his damages in that behalf: wherefore, your petitioner prays process may issue requiring the said C. D. to be and appear at the next ——— Court for said County, to answer your petitioner's complaint.

§ 3319. The form of an action for words may be as follows—to wit: Form of an
action for
words.

GEORGIA, }
—— COUNTY. } *To the Honorable ——— Court of said County.*

The petition of A. B. sheweth that C. D., of said County, has injured and damaged your petitioner in the sum of ——— dollars, by falsely and maliciously saying of and concerning your petitioner, on the —— day of ——, 18——, the following false and malicious words—to wit, (here give the words): wherefore, your petitioner prays process may issue requiring the said C. D. to be and appear at the next ——— Court to be held in and for said County, then and there to answer your petitioner's complaint.

§ 3320. All suits for slander may be prosecuted under the last preceding form of action, and the writ or complaint shall be deemed and held sufficiently technical and full, if it follows such form without material variation. Every thing else material for the maintenance of the action may be supplied by proof. Apply to
all suits for
slander.

§ 3321. When the last preceding form of action is adopted, the plaintiff may accompany the words set forth by such explanatory inuendoes as will serve to state the cause of action distinctly. May ac-
company the
words, etc.

§ 3322. The forms of action hereinbefore prescribed may be used in cases for or against executors, administrators, and other trustees. Apply to
executors,
etc.

§ 3323. In all actions which have been heretofore, or may be hereafter commenced in the forms prescribed by this Code, the evidence admissible and the form of the verdict shall be the same as though said actions had been commenced and prosecuted under the forms existing and in use by the common law. Actions
heretofore
commenced.

§ 3324. To the declaration prescribed by this Code for the recovery of land and mesne profits, the plaintiff shall annex an abstract of the title relied on for such recovery. Abstract
of title.

CHAPTER IV.

OF THE VENUE.

SECTION.

3325. Civil cases at law—where tried.
 3326. Land suits—where tried.
 3327. Suits against co-obligors, etc.
 3328. Against makers and indorsers.
 3329. Against railroad companies.
 3330. Lessees may be sued.
 3331. Suits against insurance companies.
 3332. Service of process.

SECTION.

3333. Suits against express companies.
 3334. Service—how perfected.
 3335. President's name to be posted.
 3336. Banks—where sued.
 3337. How served.
 3338. Subsequent proceedings.
 3339. Against non-residents.
 3340. *Scire facias* against bail.

Civil cases
at law.

§ 3325. All civil cases in law (except as hereinafter provided), shall be tried in the County wherein the defendant resides.

Suits re-
specting ti-
tles to land.

§ 3326. All suits respecting the title to lands shall be tried in the Superior Court of the County wherein the land lies.

Joint con-
tractors,
partners, etc.

§ 3327. Joint, or joint and several obligors or promissors, or joint contractors, or co-partners, residing in different Counties, may be sued as such in the same action in either County in which one or more of the defendants reside.

Maker and
indorser.

§ 3328. When a maker and indorser of a promissory note reside in different Counties, they may all be sued in the same action in the County where the maker resides.

Railroad
companies.

§ 3329. All railroad companies shall be liable to be sued in any County in which the cause of action originated, by any one whose person or property has been injured by such railroad company, their officers, agents, or employees, ~~in or by the running of the cars or engines~~, for the purpose of recovering damages for such injury; and also on all contracts to be performed in the County where the suit is brought.

Lessees lia-
ble to suit.

§ 3330. [The lessees of any railroad, or the person, or persons, or company having possession of the same, shall be liable to suit of any kind in the same Court or jurisdiction as the lessors or owners of the railroad were before the lease.] (a)

Suits vs. in-
surance com-
panies.

§ 3331. [Whenever any person may have any claim or demand upon any insurance company having agencies, or more than one place of doing business, it shall be lawful for such person or persons to institute suit against said insurance company within the County where the principal office of such company is located, or in any County where said insurance company may have an agency,

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or place of doing business which was located at the time the cause of action accrued, or the contract was made, out of which said cause of action arose.] (a)

§ 3332. [In all such suits, service shall be effected upon such insurance company by leaving a copy of the bill or writ with the agent of the company, if any; if no agent should be in the County, then at the agency or place of doing business, or where the same was located at the time such cause of action accrued, or the contract was made, out of which the same arose.] (a)

Service—
how perfect-
ed.

§ 3333. [The Court sitting in the County where goods are received for shipment, or where goods are to be delivered, shall have jurisdiction over all express companies which now do or may hereafter do business in this State, and the judgment shall bind all the property of said companies.] (b)

Express
companies'
venue.

§ 3334. [Such express companies may be effectually sued in any proceeding in law or equity against them (in all cases where their chief officer does not reside in this State), by leaving the bill, writ, subpoena, attachment, or other original process necessary to commence the same, at any of the offices of such company doing business in this State, or by serving the same upon any agent of said company within this State, and the judgment or decree obtained in cases so commenced, shall bind the property of the defendant as fully as though service had been effected on the president or other chief officer.] (b)

Express
companies
may be
sued—how

§ 3335. [When the chief officer of any express company shall reside in this State, it shall be the duty of such company to post in a public and conspicuous place, at each office where it transacts business, the name of its president or other chief officer, on whom service can be perfected in this State; otherwise, service made as provided for in the preceding Section shall be deemed sufficient and proper service.] (b)

Name of
chief officer
to be posted.

§ 3336. [It shall be lawful to sue any of the incorporated banks of this State, in any County thereof, for any acts of their agents, where said banks or corporations may now have, or hereafter may establish an agency.] (c)

Banks—
where sued.

§ 3337. [Service of the process upon the agent of any such banks shall be as legal and effectual as if served on the president, cashier, or bank, at its usual place of business.] (c)

Service of
process.

(a) Acts of 1862-3, p. 161, and Acts of 1861, pp. 58-9. (b) Acts of 1862-3, p. 162, and Acts of 1865-6, p. 222. (c) Acts of 1862-3, pp. 161-2.

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§ 3338. [When such process is served upon such agent, the proceedings thereafter shall be conformable to the provisions of existing laws in suits against banks; and the judgment when obtained shall be as binding and effectual as judgments against banks now are by law.] (a)

§ 3339. A citizen of another State, passing through this State, may be sued in any County thereof in which he may happen to be at the time when sued.

Citizens
of another
State.

§ 3340. *Scire facias* against bail must issue from, and be returnable to the Court in which the original judgment was obtained.

*Scire fa-
cias vs. bail.*

CHAPTER V.

BAIL IN CIVIL CASES.

ARTICLE 1.—*Bail at the Commencement of an Action.*

ARTICLE 2.—*Bail Pendente Lite.*

ARTICLE 3.—*Proceedings Against Bail.*

ARTICLE 4.—*Bail in Trover.*

ARTICLE I.

BAIL AT THE COMMENCEMENT OF AN ACTION.

SECTION.

- 3341. Bail affidavit.
- 3342. Before whom made.
- 3343. Bail for debts not due.
- 3344. Cause of action.
- 3345. Surety may require bail.
- 3346. Bail in suits *ex delicto*.
- 3347. Contents of affidavit.
- 3348. Execution of bail process.

SECTION.

- 3349. When Sheriff is special bail.
- 3350. Defendant failing to give bail.
- 3351. Bail against itinerants.
- 3352. Security for jail fees.
- 3353. Jail fees payable in advance.
- 3354. New bail—when taken.
- 3355. Service of process on Sabbath.
- 3356. Widows, etc., exempt from arrest.

§ 3341. In all cases where bail is requirable, and is required by the plaintiff, except as hereinafter provided, such plaintiff, his agent or attorney, shall make affidavit of the amount claimed by him, and that he has reason to apprehend the loss of said sum, or some part thereof, [because the defendant is removing or about to remove beyond the limits of the County, or] (b) by reason of

Affidavit to
obtain bail.

(a) Acts of 1862–3, p. 161–2. (b) Acts of 1865–6, p. 32.

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the fraud of the defendant, or his non-residence, if the defendant is not held to bail, which affidavit shall be filed in the Clerk's office, and copies thereof affixed to the original petition and process, and to the copy thereof, and the amount sworn to, shall be indorsed on the said petition and process.

Sum sworn to must be indorsed on petition.

§ 3342. An affidavit to obtain bail may be made before any Judge of the Superior, or Justice of the Inferior Court, Judge of the County Court, Justice of the Peace, Clerk of the Superior or Inferior Court, Ordinary, or Notary Public of this State, or before any commissioner duly appointed for this State, resident in any other State or Territory of the United States, or before any Judge or Justice of a Superior Court of any one of the United States, and shall have annexed thereto the seal of the State from which it shall have come, and a certificate of the Governor of such State certifying that the person taking such affidavit is one of the Judges or Justices of a Superior Court of that State.

Affidavit—before whom made.

§ 3343. When the debt is not due, and the creditor, his agent, or attorney shall make affidavit of the amount of the debt to become due, and that the debtor is about to remove, or is moving without the limits of this State, and that he has reason to apprehend the loss of said debt, or some part thereof, if the debtor is not held to bail, the creditor may commence an action, or suit at law, and hold such debtor to bail under the same regulations as are prescribed in the preceding Sections, and the bail so taken shall in like manner be liable to the creditor; but judgment shall not be rendered in any such case until after the debt shall become due.

When the debt is not due.

Judgment shall not be rendered until the debt becomes due

§ 3344. It shall not be necessary in an affidavit to obtain bail, to set forth or describe the cause of action, or character of the debt.

Cause of action.

§ 3345. When a security or indorser shall make an affidavit that he is security or indorser upon any promissory note, single bill, due bill, or bond, and that he apprehends that the payment of said debt, or some part thereof, will devolve upon himself if the principal is not held to bail, and presents said affidavit to the owner of said note, single bill, due bill, or bond, his agent, or attorney, it shall be the duty of such owner to commence suit forthwith; and such affidavit shall take the place of the one now required of the plaintiff, upon which bail process shall issue, and all other proceedings shall be the same as are now authorized in other cases of bail; and if the owner of such note, single bill, due bill, or bond

Security may require bail.

Security or indorser discharged if plaintiff fail to sue out bail.

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fail to sue as hereinbefore prescribed, such security or indorser shall no longer be held liable for the same.

Bail in actions *ex delicto*. § 3346. In all cases sounding in damages in which bail may be required, the Judge of the Superior Court may, on an affidavit, as hereinbefore prescribed, grant an order requiring bail of the defendant in such amount as he may think proper.

What the affidavit must contain. § 3347. In bail cases sounding in damages the sum sworn to need not be indorsed upon the back of the writ, nor is it necessary that the affiant should swear to any particular sum as damages, but must state the facts as to the nature and extent of the injury which he has sustained; but it is no objection that the sum for which the Sheriff is directed to take bail differs from that claimed in the declaration.

How executed and returned. § 3348. When any bail process shall issue out of any of the said Courts, whereby bail shall be required of any person to answer any action in any of said Courts, the Sheriff, or other arresting officer, shall take a bond, payable to the plaintiff, with one or more sufficient securities, for double the sum sworn to, and shall return such bond, with the petition and process, to the Court to which it is made returnable.

Officer failing to take bail, etc. § 3349. In case the Sheriff, or other officer, shall fail to take bail as required by the preceding Section, or the bail taken shall be deemed insufficient by the Court, on exceptions taken thereto, and an entry made thereof at the first term to which the said petition and process shall be returned, such Sheriff, or other officer, and his securities in either case, shall be deemed and stand as special bail, and the plaintiff may proceed to judgment according to the provisions hereinafter mentioned.

Defendant failing to give bail. § 3350. In all cases where any defendant of whom bail shall be required shall fail to give good and sufficient bail, it shall be the duty of the Sheriff, or other officer making the arrest, to commit such defendant to the common jail of the County; or if there shall be no jail in the County, or the same shall be insufficient, the said Sheriff, or other arresting officer, shall convey such defendant to the jail of any adjoining County, and deliver such defendant to the keeper of said jail; but such person so arrested and committed to jail shall be allowed all the benefits of appearance and defense, as if he were personally present; and shall not be discharged out of custody but by putting in bail, or by order of Court.

May be committed to jail of adjoining County.

§ 3351. When a bail process is placed in the hands of a Sheriff,

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or his deputy, and the person against whom such process may be is moving about from one County to another, the said Sheriff or deputy may follow the said person into any County in this State, and serve such process.

Bail against
itinerant
persons—
how served.

§ 3352. In all cases where a defendant shall be arrested by virtue of any civil process, at the suit of any person residing out of the County or State, or where the arresting officer, for the want of a sufficient jail in the County, shall convey such defendant to the jail of an adjoining County, as provided in the preceding Section, the keeper of such jail shall receive such defendant into his custody, and him safely keep until he is discharged from thence according to law, or by the direction of the plaintiff; *provided*, that the plaintiff, his agent, or attorney, shall give bond with sufficient security, to the keeper of such jail, or deposit the money for the maintenance and jail fees of the defendant, to be paid weekly.

Non-resi-
dent plaintiff
must give
security.

§ 3353. [When any person is about to be imprisoned in the common jail of any County in this State on mesne or final process for debt, before such confinement the plaintiff in suit or execution, his agent, or attorney, shall pay in advance, the jail fees each week: and in case of failure to make such payment in advance, then the Sheriff or Jailor shall have the right and authority to decline to receive said person or persons.] (a) *

Jail fees
payable in
advance.

§ 3354. Where the bail shall surrender his principal either in open Court or in vacation, to the Sheriff of the County in which such principal may reside, and before the principal has been arrested by a *capias ad satisfaciendum*, it shall be the duty of such Sheriff to take new bail, if the bail offered is good for the forthcoming of the principal to be arrested with a *capias ad satisfaciendum* in said case, and in default thereof to pay the debt and costs.

New bail
in certain
cases.

§ 3355. Bail process may be issued and served on the Sabbath day and in the same manner, and under the same rules, regulations, and restrictions as are provided for the issuing and serving the same on other days, provided the person applying for such bail process, shall in addition to the oath heretofore required to be taken, swear that he apprehends the loss of the debt or some

Bail process
may be serv-
ed on Sab-
bath.

(a) Acts of 1866, p. 24.

* See Sections 3333 and 3334 of the original Code, and also Section 3352.

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part thereof, unless said bail process shall issue on the Sabbath day.

§ 3356. No widow or *feme sole* shall be arrested, imprisoned, or in any manner restrained or deprived of her liberty for or on account of any debt or demand against her.

Widows and
feme soles
exempt from
arrest.

ARTICLE II.

BAIL PENDENTE LITE.

SECTION.

3357. Bail *pendente lite*—affidavit.
3358. Process—how issued and executed.
3359. Sheriff's duty as to process.

SECTION.

3360. Defendant—how dealt with.
3361. Liability of bail.
3362. No delay—service of process.

§ 3357. In all cases where an action is pending, and no bail shall have been required at the commencement of said action, or having been required, may have been discharged, and the plaintiff, his agent, or attorney, shall require bail, such plaintiff, his agent, or attorney, shall make affidavit as prescribed in Section 3341, which affidavit shall be filed in the Clerk's office of the Court in which such action is pending, and a copy or copies thereof affixed to the process to be issued by the Clerk of said Court in which such suit may be pending, and to the copy or copies of such process, and the amount sworn to shall be indorsed on such process, and the copy or copies thereof.

Bail *pen-*
dente lite.

§ 3358. When an affidavit is made as provided in the preceding Section, and filed in the Clerk's office of the Court in which such suit is pending, the Clerk thereof shall immediately issue a process in the case with as many copies as there are defendants, annexing a copy of such affidavit to said process and copy process, which process shall be made returnable to the next term of said Court after the issuing of the same, and shall be executed and returned into Court by the Sheriff, or other proper officer, and when so executed and returned, shall be taken and considered a part of the record in said case.

Process—
how issued
and execut-
ed.

§ 3359. When the said process and copy affidavit, and copy process shall issue as aforesaid, they shall be delivered to the Sheriff, or proper officer, whose duty it shall be to execute the same at any time before the sitting of the Court to which the said process may

Sheriff's
duty.

Article 2.—Bail Pendente Lite.

be returnable, under the same directions and provisions as pointed out in Section 3348.

§ 3360. Any defendant when arrested by virtue of said process shall be dealt with by the officer arresting him in the same manner as would have been done had such defendant been arrested at the commencement of said action on bail process, and may be discharged in the same manner, and not otherwise. Defendant—how dealt with.

§ 3361. All bail taken pending the action shall be held and bound, and liable in the same manner as he would have been had he become bail at the commencement of the action; and the plaintiff in said action shall be authorized to proceed in the same manner against the defendant and bail, or either of them, as provided in cases of bail at the commencement of the action. Liability of bail *pendente lite*.

§ 3362. A defendant so held to bail pending an action shall not, on account thereof, be entitled to any delay or continuance, but the case shall proceed to trial as though bail had been required and taken at the commencement of the case; and when there are more defendants than one in such suit, some of whom reside out of the County in which such suit is pending, a second original process, and copy or copies, may issue, returnable to the Court in which such suit or action is pending, which, when served by the Sheriff, or other proper officer of the County where such defendant or defendants reside, the said defendant or defendants shall be subject and liable to the same provisions as they would have been had the bail process issued at the commencement of the action. Bail *pendente lite* works no delay. Service of defendants in different Counties.

ARTICLE III.

PROCEEDINGS AGAINST BAIL.

SECTION.

- 3363. Nature of bail.
- 3364. Enforcement of bail's liability.
- 3365. Surrender of principal.
- 3366. *Scire facias*—how directed, etc.

SECTION.

- 3367. Against whom it may issue.
- 3368. When it may be returned.
- 3369. Judgment on *scire facias*.

§ 3363. All bail taken according to the provisions of this Code shall be deemed, held, and taken, as special bail, and as such be liable to the recovery of the plaintiff. Special bail.

§ 3364. The plaintiff, after final judgment, shall not take out execution against the bail until a *capias ad satisfaciendum* shall Ca. sa. against principal, and return thereon

Article 3.—Proceedings against Bail.

be first issued thereon, and the principal can not be found, which process shall issue without any additional oath by the plaintiff. *Scire facias* After its return with an entry of "not to be found," a *scire facias* may issue against the bail, which shall be served on the bail at least twenty days before the return thereof. If the bail resides out of the County or State, *scire facias* may be served by publication as prescribed in cases of *scire facias* to revive judgment.

§ 3365. The bail may surrender his principal at any time before final judgment on *scire facias*, either in open Court or to the Sheriff of the County in which such principal may reside, at any time in vacation; and if surrendered in open Court, it shall be the duty of the Court to order such principal into the custody of the Sheriff; and if surrendered in vacation, it shall be the duty of the Sheriff to receive such principal into his custody, and, in either event, to commit him to jail according to the directions of this Code.

§ 3366. All writs of *scire facias* shall be directed to all and singular the Sheriffs of the State of Georgia, and copies thereof issued by the Clerk of the Court to which said *scire facias* is returnable, and may be served by the Sheriff of the County in which the party to be notified may reside, and the original returned to the office of the Clerk.

§ 3367. A *scire facias* on a bail bond may issue against the bail alone, or against the principal and bail jointly, and if the Sheriff return *non est inventus* as to the principal, the plaintiff may enter up judgment against the bail.

§ 3368. For the purpose of fixing bail, the *ca. sa.* against the principal may be returned as soon as the Sheriff or other officer has made due search.

§ 3369. In *scire facias* against bail, if no plea shall be filed, judgment may be rendered, upon motion, at the return term without the intervention of a jury; but if such bail file an issuable plea, he shall be entitled to a trial by a jury.

ARTICLE IV.

BAIL IN ACTIONS FOR PERSONALTY.

SECTION.

3370. Bail in trover.

3371. Affidavit and proceedings.

SECTION.

3372. Bail pending the suit, etc.

Article 4.—Bail in Actions for Personalty.

§ 3370. Where any person who is about to commence an action or suit at law, or in equity, for the recovery of personal property, shall require bail, such person, his agent, or attorney, shall make affidavit that the property is in the possession, custody, or control of the defendant, and that he has reason to apprehend that the said personal property has been or will be elojned or removed away, or will not be forthcoming to answer the judgment, execution, or decree that shall be made in the case; and shall also state in his affidavit the value of the same, and the amount of hire claimed, if any, and add that he does verily and *bona fide* claim said personal property, or some valuable interest therein.

Bail in
trover.

§ 3371. When such affidavit is made as prescribed in the preceding Section it shall be filed in the Clerk's office of the Court to which said petition, bill, or other process may be returnable, and a copy thereof affixed to the original petition, bill, or process, and to the copy or copies thereof, and it shall be the duty of the Sheriff, or other lawful officer serving such petition, bill, or other process, to take a recognizance, payable to the plaintiff or complainant, with good security, in double the amount sworn to, for the forthcoming of such personal property to answer such judgment, execution, or decree as may be rendered or issued in the case, and such security shall be bound for the payment of the eventual condemnation money, and liable to execution in the same manner as securities upon appeals.

Affidavit—
how filed,
and subse-
quent pro-
ceedings.

§ 3372. When such affidavit shall be made during the pendency of such suit or action, a copy thereof, and of the process or subpoena, shall be served in like manner by the Sheriff, or other lawful officer, and security taken as required in the preceding Section, and upon the defendant failing to give such security, whether the affidavit be made at the commencement of the suit or pending the same, the property shall be seized and taken by the Sheriff, or other lawful officer, and delivered over to the plaintiff or complainant, his agent, or attorney, upon his entering into like recognizance, with security; and if such property is not to be found, and can not be seized and taken by such Sheriff, or other lawful officer, the defendant shall be committed to jail, to be kept in safe and close custody until the said personal property shall be produced, or until he shall enter into bond, with good security, for the eventual condemnation money, in the nature of security upon appeals.

Bail pending
the action.Property—
how replev-
ied.

CHAPTER VI.

OF MAKING PARTIES PENDING ACTION.

SECTION.

- 3373. Parties made on motion.
- 3374. When defendant dies.
- 3375. When executors, etc., die.
- 3376. How made in claim cases.
- 3377. Appeal when party dies.
- 3378. Appeal revives action.
- 3379. When garnishee dies.
- 3380. When executor, etc., is removed.
- 3381. Contents of *scire facias*.

SECTION.

- 3382. How issued and served.
- 3383. Service in different Counties.
- 3384. When non-resident dies.
- 3385. When female marries.
- 3386. When both parties die.
- 3387. On death of usee.
- 3388. Successor of trustee.
- 3389. Execution against female defendant

Parties
made on
motion.

§ 3373. When a plaintiff or complainant in any cause now or hereafter pending shall die, the executor or administrator of such plaintiff or complainant may be made parties on motion, to be made in writing, of which the defendants, or their counsel, shall have notice.

Party defen-
dant—how
and when
made.

§ 3374. In case the defendant shall die pending a suit at law, or in equity, the plaintiff may sue out a *scire facias* immediately after the expiration of twelve months from the probate of the will or granting of letters of administration, requiring such executor or administrator to appear and answer to the said cause.

Successor
of executor,
etc. may be
made party.

§ 3375. Upon the death of any executor, administrator, or guardian, or upon the revocation of his letters testamentary, of administration, or guardianship, as the case may be, pending suits at law or in equity by or against such executor, administrator, or guardian, as such, and such death or removal being suggested of record, a *scire facias* may issue to make the successors of such deceased or removed person a party at any time after his appointment and qualification, instead of the deceased or removed executor, administrator, or guardian.

Parties—
how made in
claim cases.

§ 3376. In all cases where a claim shall be interposed to property levied upon by virtue of a *fieri facias* or attachment from any of the Courts of this State, in favor of one or more persons, and pending such claim one of the plaintiffs shall die, the case shall proceed in the name of the survivor, and on the death of the last or only plaintiff the executor or administrator of such deceased may, on motion, be made a party instanter, and said case shall proceed without further delay.

§ 3377. When either the plaintiff or defendant shall depart this life pending a trial, or after a cause has been tried, and be-

Chapter 6.—Making Parties Pending Action.

fore the expiration of the time within which such party, if living, might enter an appeal, and no appeal shall have been entered, the legal representatives of such party dying may enter an appeal within thirty days from the time such executor or administrator shall have been qualified; and if such appeal is not entered within the time herein prescribed, judgment may be entered and execution issued as though the deceased party was in life, without making the representative a party.

Appeal where party dies before it is entered.

Judgment where no appeal is entered.

§ 3378. When an appeal shall be entered as provided in the preceding Section, it shall not be necessary to revive such suit by *scire facias*, but it shall be revived by the party appealing giving notice to the adverse party within thirty days from the time of entering such appeal, and when a defendant shall appeal, said cause shall stand for trial on the appeal docket at the first term of the Court after the expiration of twelve months from the qualification of such executor or administrator.

Appeal re-vives the suit.

§ 3379. When any person after being summoned as garnishee shall die, either before or after answer, the executor or administrator of such person shall be made a party by *scire facias* in the usual way.

Representatives of guardians may be made parties

§ 3380. In case of the death or removal from office of any such executor or administrator pending such proceeding as prescribed in the preceding Sections, an administrator *de bonis non* may be made a party in like manner.

Administrator *de bonis non* may be made party.

§ 3381. All writs of *scire facias* for the purpose of making parties to any suit at law or in equity pending in the Superior Courts of this State, shall be issued by the Clerk of said Court, in which it shall be sufficient for such Clerk to state the names of the parties, the term of the Court to which said cause was made returnable, and the name of the suit or action, requiring the party to show cause why he should not be made a party to said cause, without setting forth the substance of the bill, or declaration, or the proceedings thereon.

Contents of *scire facias*.

§ 3382. All writs of *scire facias* to make parties shall be issued, directed, and served, and returned as provided in Sections 3548 and 3549.

Scire facias — how issued and served.

§ 3383. In cases where there are several parties to be served with *scire facias*, and any one or more of them reside out of the State or County in which the suit is pending, a service upon those residing in the County where the suit is, and a return that the

Scire facias against parties in different Counties

Chapter 6.—Making Parties Pending Action.

others are not to be found, shall be sufficient to authorize the making of the representatives of the deceased plaintiff or defendant parties, so as to authorize the original suit in the name of the parties so made, to proceed to trial and judgment as though all such parties had been served with *scire facias*.

§ 3384. In all cases where a defendant duly served with process, or subpoena in any case at law or equity, shall reside out of this State, or shall remove therefrom during the pendency of said cause, and the plaintiff or complainant shall die, his legal representatives shall be made parties on motion and without notice.

§ 3385. When a *feme sole* being plaintiff or defendant shall marry pending any suit at law, or in equity, the same shall not abate by reason of such intermarriage, but the same being suggested of record, such cause shall proceed in the name of the husband and wife, either as plaintiffs or defendants as the case may be.

§ 3386. When both plaintiff and defendant die, before a *scire facias* issues to make parties, the action does not abate, but *scire facias* may issue on the motion of the representative of either party against the representative of the other, and the cause proceed.

§ 3387. On the death of the usee his representatives must be made parties as hereinbefore provided, before the cause can proceed even in a claim case.

§ 3388. On the death of a trustee or receiver pending a suit to which he may be a party as such, the same does not abate, but his successor may be made a party thereto by *scire facias*, and said cause proceed to judgment.

§ 3389. On the death or marriage of a female defendant after final judgment, when no execution has been issued previous to such death or marriage, execution may issue as though such marriage or death had not taken place.

CHAPTER VII.

ABATEMENT, RETRAXIT, DISMISSAL, AND RENEWAL OF ACTIONS.

SECTION.

- 3390. Suits not abated by death.
- 3391. Nor removal of executor.
- 3392. Nor death of one administrator.
- 3393. Nor of co-defendant.
- 3394. Nor when some are not liable.

SECTION.

- 3395. Suits against Sheriff survive.
- 3396. Death may be suggested.
- 3397. Retraxit defined.
- 3398. Differs from dismissal, etc.
- 3399. Suits may be dismissed.

Chapter 7.—Abatement, Retraxit, Dismissal and Renewal of Actions.

§ 3390. No suit shall abate by the death of either party, where such cause of action will in any case survive to or against the legal representatives of the deceased party, either in the same or any other form of action.

When action does not abate.

§ 3391. When letters testamentary may be revoked, and an intestacy for any cause declared, no suit by or against the removed executor shall abate, and the newly appointed administrator can be made a party plaintiff or defendant in his stead.

Suits against removed executor do not abate.

§ 3392. An action against two joint administrators or executors does not abate by the death of one, but proceeds against the survivor.

Death of one of several administrators does not abate suit.

§ 3393. On the death of a co-defendant in an action of ejectment, made such after the commencement thereof, the action may proceed against the surviving defendant without making the representative of the deceased co-defendant a party.

Death of co-defendant.

§ 3394. An action against several persons does not abate where it appears that some of the defendants are not liable, but may proceed against those who are liable.

One of several defendants not being liable.

§ 3395. An action against a Sheriff for an escape out of process shall not abate on the death of such Sheriff, but shall survive against his securities and legal representatives.

Suits against Sheriff survive his death.

§ 3396. In all cases which have been, or may be commenced in any of the Courts of this State, at law or in equity, against two or more defendants, one or more of whom have died, or may die pending said case or cases, it shall and may be lawful for the plaintiff or complainants to suggest said death of record, and to proceed in the trial of said case, or cases, against the surviving defendant, to the extent of their respective liabilities.

Death of one of several defendants.

§ 3397. A retraxit is the open, public, and voluntary renunciation by the plaintiff, in open Court, of his suit or cause of action; and if this is done by the plaintiff, and a judgment entered up thereon by the defendant, the plaintiff's right of action is forever gone.

Retraxit.

§ 3398. A retraxit differs from a non-suit, dismissal, or discontinuance, in this: A retraxit is positive and conclusive of the plaintiff's right of action, while a non-suit, dismissal, or discontinuance, is negative, and the plaintiff may re-commence his suit on the payment of costs.

Differs from dismissal.

§ 3399. The plaintiff, in any action, in any Court, may dismiss his action either in vacation or term time, and if done in term time, the Clerk or Justice shall enter such dismissal on the docket.

Actions may be dismissed at any time.

Article 1.—General Provisions.

TITLE III.

OF DEFENSES AND PROCEEDINGS PENDING ACTION.

CHAPTER 1.—*Of Defenses, Pleas, etc.*CHAPTER 2.—*Of Amendments.*CHAPTER 3.—*Of the Production of Papers.*CHAPTER 4.—*Of Continuances.*CHAPTER 5.—*Of Garnishments.*

CHAPTER I.

DEFENSES, PLEAS, ETC.

ARTICLE 1.—*General Provisions.*ARTICLE 2.—*Particular Pleas.*

ARTICLE I.

GENERAL PROVISIONS.

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3400. Answer at first term.
 3401. No part to be stricken out.
 3402. Bonds, etc., denied only on oath.
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SECTION.

3404. Dilatory pleas must be sworn to.
 3405. Judgment by default.
 3406. General issue—special pleas.
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Defendant's
answer to be
filed at first
term.

§ 3400. In all cases at law where the defendant has been served with petition and process, as provided by this Code, he shall appear at the Court to which such process is made returnable, and on or before the last day of said Court, shall make his defense in writing, which shall plainly, fully, and distinctly set forth his defense, and be signed by the defendant or his attorney; which said answer shall contain as many several matters as such defendant may think necessary for his defense.

§ 3401. No part of an answer shall be stricken out or rejected on account of being contradictory to another part of the same, but the Court shall suffer the whole answer to remain, if the defend-

Article 1.—General Provisions.

ant should desire it, and avail himself of any advantage he can or may have under either or the whole of said answer, and proceed to trial accordingly.

No part of answer to be stricken out.

§ 3402. No person shall, in his plea or answer, be permitted to deny any deed, bill, single or penal bond, note, draft, receipt, order, or other instrument in writing, which is the foundation of the action, unless he shall make affidavit of the truth of such plea or answer at the time of filing the same.

Instrument sued on denied only on oath.

§ 3403. The petition and answer shall be sufficient to carry the cause to the jury, without any replication or other course of proceeding.

Petition and answer make the issue.

§ 3404. No dilatory answer shall be received or admitted, unless an affidavit be made to the truth thereof, and must be filed at the first term.

Dilatory pleas.

§ 3405. When any defendant shall fail to appear and answer at the return term of the petition and process, the Court shall enter default upon the docket, which shall be considered a judgment by default, without a formal entry thereof, and the plaintiff's claim, allegation, or demand, shall be tried, in all cases of default, by a jury; but no such trial shall, in any case, be had at the first term, except specially provided for by law: [*provided, that, in all cases of suits on open accounts, in the several Courts of this State, where the writ or process has been served personally, as the law now directs, on the defendant, and there is no defense made by the party sued, either in person or by attorney, at the time the case is submitted for trial, the case shall be considered in default, and the plaintiff or plaintiffs shall be permitted to take verdict, as if each and every item were proved by testimony.*] (a)

Default and proceedings thereon.

Suits on open accounts.

§ 3406. The general issue is a denial of the allegations in the plaintiff's declaration, and shall be considered as filed in all cases which are answered to at the first term; and no other evidence is admissible under such plea, except such as disprove the plaintiff's cause of action; all other matters, in satisfaction or avoidance, must be specially pleaded.

General issue.

§ 3407. All defects which appear on the face of the pleadings may be taken advantage of by motion.

Patent defects.

Section 1.—To the Jurisdiction.

ARTICLE II.

PARTICULAR PLEAS.

SECTION 1.—*To the Jurisdiction.*SECTION 2.—*Of Set-off.*SECTION 3.—*Of Usury.*SECTION 4.—*Of Failure of Consideration.*SECTION 5.—*Of Non est Factum.*SECTION 6.—*Of Other Pleas.*

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TO THE JURISDICTION.

SECTION.

3408. Jurisdiction not given by consent.

3409. When admitted.

3410. Pleas to the jurisdiction.

SECTION.

3411. Contents of the plea.

3412. Must be sworn to.

§ 3408. Parties, by consent, express or implied, can not give jurisdiction to the Court as to the person or subject-matter of the suit. It may, however, be waived, so far as the rights of the parties are concerned, but not so as to prejudice third persons.

§ 3409. If a defendant appear and plead to the merits, without pleading to the jurisdiction, and without excepting thereto, he thereby admits the jurisdiction of the Court.

§ 3410. Pleas to the jurisdiction must be pleaded in person, and must, when relied on, be pleaded specially, unless a want of jurisdiction appears on the face of the proceedings—in which case, it may be taken advantage of, on motion.

§ 3411. In all pleas to the jurisdiction of the Court, it must appear that there is another Court in this State which has jurisdiction of the case.

§ 3412. A plea to the jurisdiction, being a dilatory plea, must be sworn to.

all pleas must be sworn to Acts 1870.

Section 2.—Set-off.

SECTION II.

OF SET-OFF.

SECTION.

3413. Pleas of set-off.

3414. Sets-off against estates.

3415. Judgments may be set off.

SECTION.

3416. Set-off of improvements.

3417. Judgment for excess of set-off.

3418. Limitations of set-off.

§ 3413. Debts, as a general rule, must be mutual between the same parties at the commencement of the action to be set off against each other. Every plea of set-off must set out the demand as plainly as if sued on. Set-off.

§ 3414. When a defendant pleads a set-off of a larger amount than the demand of the testator or intestate, the plaintiff may reply by showing that the estate is insolvent, and that there are outstanding debts, of higher dignity than the defendant's set-off, sufficient to exhaust the assets, for the purpose of protecting the executor or administrator from an absolute judgment. Plea of set-off against estates.

§ 3415. One judgment may be set off against another, on motion, whether in the hands of an original party or an assignee. Judgments may be set off.

§ 3416. A trespasser can not set off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or improvements which have been made. In that case, the jury may take into consideration the improvements or repairs, and diminish the profits by that amount, but not below the sum which the premises would have been worth without such improvements or repairs. When improvements may be set off in ejectment.

§ 3417. In all cases of mutual debts and sets-off, where the jury shall find a balance for the defendant, such defendant may enter up judgment for the amount, and take out execution in such manner as plaintiffs may do by this Code; *provided*, such defendant shall, at the time of filing his answer, file therewith a true copy or copies of the subject-matter of such sets-off; and where the plaintiff shall be indebted to the defendant on open account for dealings between themselves, and where the defendant shall hold and possess in his own right, by assignment indorsement, or otherwise, according to law, any bond, note, bill, or other writing for money, or other thing, of the plaintiff's, such defendant may offer the same as set-off, and, on due proof, shall be allowed the same. Judgment for excess of set-off.

§ 3418. The statute of limitations applies to the subject-matter of sets-off, as well as the plaintiff's demand. What pleadable as set-off.

Limitations of sets-off.

Section 3.—Usury.

SECTION III.

USURY.

SECTION.

3419. Pleas of usury.

SECTION.

3420. Examination of parties.

Plea of
usury.

§ 3419. The plea of usury must set forth the sum upon which it was paid, or to be paid, the time when the contract was made, when payable, and the amount of usury agreed upon, taken, or reserved.

Parties may
be examined

§ 3420. When the plea of usury is filed, the defendant may examine the plaintiff as a witness, on the same terms and in the same manner as is prescribed for the examination of parties as witnesses in other cases; and if the plaintiff declines to answer, the defendant himself may be examined as a witness.

SECTION IV.

FAILURE OF CONSIDERATION.

SECTION 3421. Plea of failure of consideration.

Plea of fail-
ure of con-
sideration.

§ 3421. Whenever an action shall be commenced at common law, founded upon any contract, the defendant in such action may plead and give in evidence to the jury, upon the trial thereof, that the consideration upon which said contract was founded has totally or partially failed. Such plea shall only be pleaded in cases between the original parties to the contract, or their privies or assignees, whose title has been acquired with notice, actual or constructive, or by operation of law.

SECTION V.

NON EST FACTUM.

SECTION 3422. Plea of *non est factum*.

§ 3422. The plea of *non est factum* is a denial of the execution of the instrument sued upon, and applies to notes and other instruments, as well as deeds, and applies only when the execution of the instrument is alleged to be the act of the party filing the plea, or adopted by him.

Section 6.—Other Pleas.

SECTION VI.

OF OTHER PLEAS.

SECTION.

3423. Pleas peculiar to executors, etc.

3424. Other pleas by them.

3425. Plea of *nul tiel record*.

SECTION.

3426. Of former recovery, etc.

3427. Plea of coverture.

3428. Defenses by Sheriff.

§ 3423. When an executor or administrator is sued as such, he may plead *ne unques* executor, or that no assets have come into his hands, or *plene administravit præter*, a sum not sufficient to satisfy debts of a higher nature against the deceased, held by third persons, or *plene administravit*, that he has fully administered the assets that came into his hands, or, pending the action, his letters testamentary or of administration have been revoked, and the administration committed to another, to whom all the assets which came into his hands have been delivered.

Pleas peculiar to executors and administrators.

§ 3424. An executor or administrator, when the cause of action originated in the lifetime of the testator or intestate, may plead any plea which such testator or intestate might plead if living, and he may also plead in abatement in all such cases where such plea is applicable.

Other pleas by executors, etc.

§ 3425. The plea of *nul tiel record* can only be pleaded to a record which is the gist or foundation of the action, and not to a record which is stated as an inducement only.

Plea of *nul tiel record*.

§ 3426. A former recovery, or the pendency of a former suit for the same cause of action, between the same parties, in the same, or any other Court that has jurisdiction, shall be a good cause of abatement; but if the first action is so defective that no recovery can be possibly had, the pendency of a former suit will not abate the action.

Pleas of former recovery and pendency of former suit.

§ 3427. When a *feme sole* is sued on a contract made by her while *covert*, and she pleads her *coverture* in bar, it is not a sufficient reply that she promised to pay or perform the contract after she is constituted a free dealer, or becomes a *feme sole*, unless it be shown that there was a new consideration, or moral obligation, or separate estate secured to her at the time she made the contract.

Plea of coverture.

§ 3428. A Sheriff, or other officer, can not defend himself against an action for escape by showing that the process under which the arrest was made was irregular, though he may when the process is void.

Defense by Sheriff.

Article 1.—General Principles.

CHAPTER II.

OF AMENDMENTS.

ARTICLE 1.—*General Principles.*ARTICLE 2.—*Particular Cases.*

ARTICLE I.

GENERAL PRINCIPLES.

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3429. Amendment of pleadings.
 3430. New parties, etc., not allowable.
 3431. Amendment to include issue.
 3432. Imposition of terms.
 3433. Misnomers.
 3434. Names of partners.

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3435. Names of defendants.
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 3437. Representative character.
 3438. Omission of jurisdiction.
 3439. *Scire facias* amendable.
 3440. Amendments of process.

Amend-
ments of
pleadings—
when al-
lowed.

§ 3429. All parties, whether plaintiffs or defendants in the Superior or other Courts (except the Supreme Court), whether at law or in equity, may, at any stage of the cause, as matter of right, amend their pleadings in all respects, whether in matter of form or of substance, provided there is enough in the pleadings to amend by.

New cause
of action and
parties not
allowable.

§ 3430. No amendment adding a new and distinct cause of action, or new and distinct parties, shall be allowed unless expressly provided for by law.

Amend-
ments to in-
clude issue.

§ 3431. [When any suit or action is pending in any Court of law or equity in this State, for the recovery of personal property, the issue of said property born, or to be born, or accruing after the commencement of such suit or action, may be recovered in such suit or action, and it shall be the duty of the Court to allow the declaration or bill to be amended at any stage of the proceedings so as to include such issue.]

Amending
party may
be put upon
terms.

§ 3432. In case the party applying for leave to amend the pleadings or other proceedings shall have been guilty of negligence in respect to the matter of amendment, the Court may compel him to pay his adversary the cost of the proceedings for which he moves, and may force reasonable and equitable terms upon him at discretion, not touching the real merits of the cause in controversy.

Article 1.—General Principles.

§ 3433. All misnomers, whether in the christian or surname, made in writs, petitions, bills, or other judicial proceeding on the civil side of the Court, shall, on motion, be amended and corrected *instante*, without working unnecessary delay to the party making the same. Misnomers amendable *instante*. 369a box

§ 3434. In all suits by or against partners, or where any two or more persons sue or are sued in the same action, and the name of any person who ought to be joined in such action as plaintiff or defendant is omitted, the omissions shall, on motion, be amended by adding the proper party *instante*. Names of partners may be added *instante*.

§ 3435. When two or more persons sue or are sued in the same action, either on a contract or for a tort, the plaintiff may amend his declaration by striking out one or more of such defendants and proceed against the remaining defendant or defendants, if there is no other legal difficulty in the case. Names of one or more defendants may be stricken.

§ 3436. When several plaintiffs sue jointly, the declaration may be amended by striking out the name of one or more of such plaintiffs. And when it becomes necessary for the purpose of enforcing the rights of such plaintiff, he may amend by substituting the name of another person in his stead, suing for his use. Name of one or more plaintiffs may be stricken.

§ 3437. In an action by or against an executor, administrator, or other representative, the declaration may be amended by striking out the representative character of such plaintiff or defendant. And in an action by or against an individual, the pleadings may be amended by inserting his representative character. Representative character of parties may be changed.

§ 3438. The omission to give the Court jurisdiction in the pleadings is amendable. Omission of jurisdiction amendable.

§ 3439. *Scire facias* is amendable as other pleadings. *Scire facias* amendable. 1925

§ 3440. Void process, or where there is no process or waiver thereof, can not be amended, but if service be acknowledged by the defendant, and upon hearing testimony the Court becomes satisfied that process was waived by the defendant, and that at the time such service was acknowledged by accident or mistake the entry of such waiver was omitted, such omission may be supplied by amendment *nunc pro tunc*. Amendment of process. 597

Section 1.—Amending Verdicts, Judgments, etc.

ARTICLE II.

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SECTION 1.—*Of Amending Verdicts, Judgments, and Executions.*SECTION 2.—*Of Amending Official Returns.*SECTION 3.—*Of Amending Records.*SECTION 4.—*Of Other Amendments.*

SECTION I.

OF AMENDING VERDICTS, JUDGMENTS, AND EXECUTIONS.

SECTION.

3441. Amendments of verdicts.

3442. After dispersion of jury.

3443. Where part is legal and part not.

SECTION.

3444. Amendment of judgment.

3445. Of executions.

Amendment
of verdicts.

§ 3441. A verdict may be so amended as to make it conform to the declaration, if the error plainly appears upon the face of the record.

After dis-
persion of
jury.

§ 3442. A verdict may be amended in mere matter of form, after the jury have dispersed; but after it has been received and recorded, and the jury dispersed, it can not be amended in matter of substance, either by what the jurors say they intended to find, or otherwise.

Where part
is legal and
part illegal.

§ 3443. If a part of a verdict be legal and a part illegal, the Court will construe such verdict, and order it amended by entering a remitter as to that part which is illegal, and give judgment for the balance.

Amendment
of judg-
ments.

§ 3444. A judgment may be amended by order of the Court in conformity to the verdict upon which it is predicated, even after an execution issues.

Amendment
of execu-
tions.

§ 3445. A *fieri facias* or *capias ad satisfaciendum* may be amended so as to conform to the judgment from which it issued, and also as to the time of its return; but if such *fi. fa.* be levied, or the defendant be under arrest by virtue of such *ca. sa.* at the time of the amendment, such levy or arrest must fall; still the amended *fi. fa.* or *ca. sa.* may be re-executed.

Section 2.—Amending Official Returns.

SECTION II.

AMENDING OFFICIAL RETURNS.

SECTION.

3446. Official returns amendable.

SECTION.

3447. May be made *nunc pro tunc*.

§ 3446. The Sheriff or other executing officer may amend his official entries and returns so as to make such entries and returns conform to the facts of the case at the time such entry or return was made. Official entries amendable.

§ 3447. If the Sheriff or other executing officer shall fail to make an official return, which by law he should have made, such entry or return may be made *nunc pro tunc* by order of the Court, so as to make the proceedings conform to the facts at the time the entry should have been made. May be made *nunc pro tunc*.

SECTION III.

OF AMENDING RECORDS.

SECTION.

3448. Amendment of records.

SECTION.

3449. Discretion of the Court.

§ 3448. It is a power incident to all Courts to correct their own proceedings before final judgment. Amendment of records.

§ 3449. In allowing or refusing amendments, there is a wide discretion to be exercised by the Court: hence no fixed rule can be laid down which would apply to each particular case that might arise, but as a general rule the Court will amend the entries of its orders on the minutes, or the records and other proceedings, *nunc pro tunc*— Discretion of Court as to amendments, and rules therefor.

1. When the case is within some statutory provisions.
2. When there is something on the face of the proceedings to amend by, from which what actually took place in the prior proceedings can be clearly ascertained and known.
3. In all cases where such amendment will clearly be in furtherance of justice.

Section 4.—Other Amendments.

SECTION IV.

OF OTHER AMENDMENTS.

SECTION.

3450. Affidavits of illegality amendable.

3451. Also, insolvent's schedule.

3452. Also, rules for new trial.

3453. Certain affidavits not amendable.

SECTION.

3454. Appeal bonds amendable.

3455. Also, affidavits to appeal.

3556. Also, clerical mistakes.

Affidavits
of illegality
amendable.

§ 3450. Affidavits of illegality are, upon motion and leave of Court, amendable *instantly* by the insertion of new and independent grounds; provided the defendant will swear that he did not know of such grounds when the original affidavit was filed.

Insolvent's
schedule
amendable.

§ 3451. A schedule filed by an insolvent debtor is amendable; provided he will show to the satisfaction of the Court, by affidavit or otherwise, that the omission arose from ignorance, inadvertance, mistake, or inability at the time to make it more perfect; he must, however, amend *instantly*, and will not be permitted to delay a creditor thereby.

Amendment
of rules for
new trial.

§ 3452. A rule *ni si* for a new trial may be amended by adding new grounds not taken at the time the application was filed.

Affidavits
can not be
amended.

§ 3453. An affidavit which is the foundation of a legal proceeding can not be amended except expressly provided for by law.

Amendment
of appeals
and other
bonds.

§ 3454. An appeal bond, and all other bonds taken under requisition of law in the course of a judicial proceeding, may be amended and new security given if necessary.

Affidavit
to appeal
amendable.

§ 3455. Where material words are omitted by accident or mistake in an affidavit to appeal in *forma pauperis*, such omission is amendable.

Clerical mis-
takes may be
amended.

§ 3456. The mistake or misprision of a clerk or other ministerial officer shall in no case work to the injury of a party where by an amendment justice may be promoted.

CHAPTER III.

OF THE PRODUCTION OF PAPERS.

SECTION.

3457. Production of books, etc.

3458. Notice to produce.

3459. Judgment in case of failure.

3460. Continuance.

3461. Affidavit of non-resident.

3462. Notice—how made available.

SECTION.

3463. Subpoena *duces tecum*.

3464. Penalties for disobeying.

3465. Secondary evidence.

3466. Transcripts of books.

3467. Examination of books.

Chapter 3.—The Production of Papers.

§ 3457. The several Courts shall have power on the trial of any cause cognizable before them respectively, on notice and proof thereof being previously given by the opposite party or his attorney, to require either party to produce books, writings and other documents in his possession, power, custody, or control, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same by the ordinary rules of proceeding in equity.

Production of books, etc. may be compelled.

1 Kel 231.

§ 3458. The notice required by the preceding Section shall be in writing, signed by the party seeking the production of the books or other writings, or his attorney, and served on the adverse party or his attorney, ten days before the production of the books, writings or documents shall be required, provided such party resides in the County where the suit is pended; if out of said County and within one hundred miles, fifteen days; if over one hundred miles and less than two hundred, twenty days; and if beyond the limits of this State, sixty days.

Notice to produce papers.

§ 3459. If the plaintiff or his attorney, being so notified, shall fail or refuse to comply with such order, the Court shall on motion give judgment against such plaintiff as in case of non-suit, and if the defendant shall fail or refuse to comply therewith, the Court, on motion, shall give judgment against such defendant as in case of judgment by default.

Consequences of failure to produce papers.

§ 3460. In case of the service of any notice as aforesaid, when it shall appear to the satisfaction of the Court, by an affidavit of the party, or otherwise, that such party has used due and proper diligence and can not procure the books, writings, or other documents required, the cause may be continued at the instance of the party notified.

Continuance.

§ 3461. When the party notified resides without the limits of this State, but in one of the States or Territories of the United States, such party may make the oath required before a commissioner of this State, resident in such State or Territory, or before any officer of such State or Territory in which the party notified may reside, who is authorized by the laws of such State or Territory to administer an oath, which shall be sufficient, provided the official character of the officer attesting said affidavit shall be properly proven by the certificate of the Governor, the Secretary of State, the Chancellor, or the Keeper of the Great Seal of the State or Territory in which such affidavit is made.

Affidavit of non-resident.

Chapter 3.—The Production of Papers.

§ 3462. Before the notice provided for in the preceding Sections shall be available, the party giving it, or his agent, must make oath (or his attorney state in his place) that he has reason to believe that the paper required is or has been in existence; that it is in the possession, power, or control of the person notified, and that it is material to the issue.

Notice—
how made
available.

§ 3463. When any deed, bond, note, book, writing, or other document which it may be necessary to use as testimony in any cause pending in any of the Courts of this State, may be in the possession of any person resident in any County in this State, and who is not a party to said cause, the Clerk of the Court, or Justice of the Peace, as the case may be, in which said cause is pending, shall, upon application of the party or his attorney, desirous of using such testimony, issue a *subpoena duces tecum* directed to the person having such deed, bond, note, book, writing, or other document in his possession, requiring him to be and appear at the next term of said Court, and to bring with him into said Court the paper desired to be used as testimony, which said subpoena shall be served thirty days before the Court to which it is made returnable, by a Sheriff, Constable, or some private person; and the official return of the Sheriff or Constable, or the affidavit of such private person shall be sufficient evidence that the same was duly served.

Subpoena
duces tecum

§ 3464. When a subpoena shall be issued and served as provided in the preceding Section, and the person whose attendance is thereby required shall fail to comply with the requisitions thereof, the Court shall, on motion, issue an attachment against such defaulting person, returnable to the next term of said Court, and shall fine such person in a sum not exceeding three hundred dollars, unless he shall make a sufficient excuse for such failure, to be judged of by the Court; but such person shall nevertheless be subject to an action at the instance of the party by whom he was subpoenaed for any damages which such party may have sustained by reason of such failure; *provided*, that if the person so subpoenaed shall, within ten days after the service of such subpoena, deliver to the party at whose instance the subpoena was sued out, or his attorney, or file in the office of the Court, or Justice of the Peace, from which such subpoena issued, the paper, the production of which is required by such subpoena, or shall deliver to the said party or his attorney, or shall file in the said

Penalty for
failure to
obey subpoena
duces tecum.

Subpoena
duces tecum
—how complied with.

Chapter 3.—The Production of Papers.

office his affidavit that the said paper is not in his power, custody, possession, or control, and that it was not at the time of serving said subpoena, then such delivery or filing of the paper so sought as aforesaid, or of such affidavit, shall be considered a full and complete compliance with the requisitions of such *subpoena duces tecum*.

§ 3465. In all cases pending in any of said Courts where any party, either at law or in equity, shall pursue the course in this Chapter pointed out, and is unable thereby to procure such deed, bond, note, book, writing, or other document, such party shall be permitted to go into parol evidence of the contents of such deed, bond, note, book, writing, or other document. Secondary evidence.

§ 3466. When any person shall be notified or served with *subpoena duces tecum* to produce books in his possession to be used as testimony on the trial of any cause as hereinbefore provided, if such person will make oath that he can not produce the books required without suffering a material injury in his business, and shall also make, or cause to be made out, a full transcript from such books of all the accounts and dealings with the opposite party, and have such transcript examined and sworn to by an impartial witness, and produce the same in Court, it shall be a compliance with the notice or *subpoena duces tecum*. When transcripts of books may be used.

§ 3467. When the transcript provided for in the preceding Section shall be produced in Court, if the adverse party is dissatisfied therewith, and will swear that he believes that the books contain entries material to him which do not appear in the transcript, the Court will grant him a commission to be directed to certain persons named by the parties and approved by the Court, to cause the adverse party to produce the books required (he being sworn that the books produced are all that he has or had that answer to the description in the notice), and to examine said books, and to transmit to the Court a full and fair statement of the accounts and entries between the parties under their hand, which shall be sealed up and transmitted to the Court, as in case of interrogatories; which statement, when received by the Court, shall be deemed a compliance with the notice, or *subpoena duces tecum*. When books may be examined by commissioners.

CHAPTER IV.

OF CONTINUANCES.

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3468. One continuance at common law.
 3469. When amending party may continue
 3470. Continuance for surprise.
 3471. For absence of witnesses.
 3472. Admission of facts.
 3473. Continuance for absence of party.
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3475. When case is not reached.
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 3477. Diligence required.
 3478. Non-return of interrogatories.
 3479. Continuance on appeal.
 3480. Discretion of the Court.

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But one con-
 tinuance at
 common law

§ 3468. No trial in any civil cause shall be had at the first term (except expressly provided for by law), and no cause whatever depending in any of the Courts of this State, shall be continued more than one term at common law, at the instance of the same party for any cause whatever.

Amending
 party--when
 entitled to
 continuance.

§ 3469. The party amending pleadings or other proceedings in any of said Courts shall not be entitled to delay or continuance on account of such amendment, except by leave of the Court to enable him to make such amendment.

Continuance
 charged to
 amending
 party--when

§ 3470. When any amendment shall be made to the pleadings or other proceedings in the cause, if the opposite party will make oath, or his counsel state in his place that he is surprised by such amendment, and that he is less prepared for trial, and how, than he would have been if such amendment had not been made, and that such surprise is not claimed for the purpose of delay, the case may be continued in the discretion of the Judge, at the instance of the amending party.

Continuance
 for absence
 of witnesses.

§ 3471. In all application for continuances upon the ground of the absence of a witness, it must be shown to the Court that the witness is absent; that he has been subpoenaed; that he resides in the County where the case is pending; that his testimony is material; that such witness is not absent by the permission, directly or indirectly, of such applicant; that he expects he will be able to procure the testimony of such witness at the next term of the Court; and that such application is not made for the purpose of delay, but to enable the party to procure the testimony of such absent witness, and must state the facts expected to be proved by such absent witness.

§ 3472. No continuance shall be allowed in any Court on account of the absence of a witness, or for the purpose of procuring

Chapter 4.—Continuances.

testimony, when the opposite party is willing to admit, and does not contest the truth of the facts expected to be proved, and the Court shall order such admission to be reduced to writing.

Continuance refused when the facts are admitted.

§ 3473. If either party shall be providentially prevented from attending at the trial of any cause, and the counsel of such absent party will state in his place that he can not go safely to trial without the presence of such absent party, such cause shall be continued, provided his continuances are not exhausted.

When absence of party is cause of continuance.

82. 443.

§ 3474. The illness or absence from providential cause of counsel, where there is but one, or of the leading counsel where there are more than one, shall be a sufficient ground for a continuance, provided the party making the application will swear that he can not go safely to trial without the services of such absent counsel, that he expects his services at the next term, and that said application is not made for delay only.

Continuance for absence or illness of counsel.

1892 283.
15 - 306
36 - 191
37 - 216
38 - 216

§ 3475. A cause not reached at the trial term stands over as continued.

When case is not reached.

§ 3476. When any cause shall be sent back to the Superior Court by the Supreme Court, the same shall be in order for trial at the first term of the said Superior Court next after the session of the Supreme Court; and if such case is upon the appeal, and the continuances of either party are exhausted, the said Superior Court may grant one continuance to said party as the ends of justice may require.

Continuance in cases sent back from Supreme Court.

§ 3477. In all cases the party making an application for a continuance must show that he has used due diligence.

Diligence required.

§ 3478. When a commission issues to examine a witness, it not having been returned shall be no cause of a continuance, unless the party seeking the continuance will make the same oath of the materiality of the testimony as in the case of an absent witness, and the party must show due diligence in suing out and having the same executed.

Continuance for non-return of interrogatories.

§ 3479. No appeal case shall be continued more than twice by the same party, except for providential cause, and for which it may be continued as often as justice may require.

Continuance on the appeal.

§ 3480. All applications for continuances are addressed to the sound legal discretion of the Court, and if not expressly provided for, shall be granted or refused as the ends of justice may require.

Discretion of the Court.

CHAPTER V.

GARNISHMENTS. 389a 18.

SECTION.

3481. Garnishments at common law.
 3482. How obtained.
 3483. Affidavit and bond by agent, etc.
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 3490. Garnishee—when to pay interest.

SECTION.

3491. Judgment against garnishee.
 3492. Answer of garnishee.
 3493. Collateral securities.
 3494. Attorney may be garnished.
 3495. Receiver exempt.
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 3497. Legacies, etc.
 3498. Garnishment of executors, etc.
 3499. Garnishment by Tax Collector.
 3500. Proceedings thereon.

Garnish-
ments at
common law

§ 3481. In cases where suit is pending, or where judgment has been obtained, the plaintiff shall be entitled to the process of garnishment under the following regulations:

Garnish-
ments—how
obtained.

§ 3482. The plaintiff, his agent or attorney at law, shall make an affidavit before some officer authorized to issue an attachment by this Code, stating the amount claimed to be due in such action, or on such judgment, and that he has reason to apprehend the loss of the same, or some part thereof, unless the process of garnishment do issue, and shall give bond, with good security, in a sum at least equal to double the amount sworn to be due, payable to the defendant in the suit or judgment, as the case may be, conditioned to pay said defendant all costs and damages that he may sustain in consequence of suing out said garnishment, in the event that the plaintiff fails to recover in the suit pending, or it should appear that the amount sworn to be due on such judgment was not due.

Affidavit
by agent or
attorney.

§ 3483. When the affidavit is made by the agent or attorney at law of the plaintiff, he may swear according to the best of his knowledge and belief, and shall have power to sign the name of the plaintiff to such bond, who shall be bound thereby in the same manner as though he had signed it himself.

Affidavit
and bond, by
one of a firm,
etc.

§ 3484. When the debt for the recovery of which the garnishment is sought is due to co-partners, or several persons jointly, any one of said co-partners, or joint creditors, may make the affidavit and give the bond in the name of the plaintiff, as prescribed in cases of attachment.

§ 3485. When such affidavit has been made, and bond given, it shall be the duty of the officer before whom the same is made, or

Chapter 5.—Garnishments.

Garnish-
ment—how
and by whom
issued.

any other officer authorized by this Code, to issue attachments, to whom the said bond and affidavit may be delivered, upon the request of the plaintiff, his agent, or attorney at law, to issue a summons of garnishment, directed to the person sought to be garnished, requiring him to appear at the next term of the Court where such suit is pending, or where such judgment was obtained; but if the next Superior Court shall be held within less than ten days from the time such summons shall issue, then the garnishee shall be required to appear at the next Court thereafter, then and there, or before that time, to depose on oath what he is indebted to, or what property and effects he has in his hands belonging to the defendant, or had at the time of the service of the summons of garnishment; and upon such affidavit, bond, and summons of garnishment, being delivered to any officer authorized by law to levy an attachment, it shall be his duty to serve such summons of garnishment upon the person to whom it is directed, if to be found in his County, and to make an entry of such service, and of his actings and doings in the premises upon the affidavit and bond, and return the same to the Court to which the person summoned as garnishee is required to appear; and all subsequent proceedings shall be the same as in this Code prescribed in relation to garnishment in cases of attachment. [Summons of garnishment may issue under the provisions of this Section, from time to time, before trial, without giving any additional bond.] (a)

Garnish-
ment against
persons re-
siding out of
the County.

§ 3486. When any of the persons sought to be garnished reside in a different County from the one where suit is pending, or in which judgment was obtained, it shall be the duty of the officer taking such affidavit and bond, or any other officer of the County where such suit is pending, or where such judgment was obtained, authorized by this Code to issue an attachment, to whom said bond and affidavit may be delivered, to make out a copy thereof, and certify the same to be true, and shall deliver said certified copy to the plaintiff, his agent, or attorney at law; and upon such certified copy being delivered to any officer authorized to issue an attachment, of the County where the person sought to be garnished resides, it shall be the duty of such officer to issue summons of garnishment for such person as he may

Chapter 5.—Garnishments.

be directed by the plaintiff, his agent, or attorney at law, requiring him to appear at the next Superior or Justices' Court of said County, according as such suit is pending, or judgment was obtained in the Superior or Justices' Court, then and there to depose according to the provisions of the previous Sections; but if the said Superior Court shall be held within less than twenty days, or said Justice's Court shall be held within less than ten days from the time such garnishment issues, the garnishee shall be required to appear at the next Court thereafter.

How issued,
served, and
returned, etc.

§ 3487. Upon such certified copy of affidavit, bond, and summons of garnishment, being delivered to any officer authorized by law to levy an attachment, it shall be his duty to serve the summons upon the person to whom it is directed, and to return the said copy affidavit, and bond, to the Court where such person is summoned to appear, together with his actings and doings entered thereon, and all subsequent proceedings shall be the same as is prescribed by this Code in relation to garnishment in cases of attachment, where the garnishee resides out of the County in which the attachment is returnable.

Garnish-
ments—how
dissolved.

§ 3488: In cases where garnishments are issued when suit is pending, or judgment has been obtained, the defendant may dissolve such garnishment, and have the same dismissed upon filing in the Clerk's office of the Court where suit is pending, or judgment was obtained, or with the Justice of the Peace where suit is pending, or judgment was obtained in such Court, a bond, with security, payable to the plaintiff, for the payment of the amount due on such judgment, or which may be recovered in said action, and the costs thereon, and the plaintiff may enter up judgment upon such bond against the principal and securities, as judgment may be entered against securities upon appeal.

Money rais-
ed by gar-
nishment—
how distrib-
uted.

§ 3489. All money raised by virtue of the process of garnishment under this Code shall be paid over to the creditors of the defendant, according to the priorities now established by law—the expenses of the moving creditors being first paid *pro rata*, by the judgment creditors receiving the benefit of his diligence.

Garnishee
liable for
interest—
when.

§ 3490. As a general rule, a party who is prevented from paying over money by process of law is not liable for interest; but if a garnishee resists the payment of the fund in his hands, or converts his indebtedness, he is liable for interest thereon—but he may relieve himself from interest by paying the fund into Court.

Chapter 5.—Garnishments.

§ 3491. The plaintiff shall not have judgment against the garnishee until he has obtained judgment against the defendant. Judgment.

§ 3492. The garnishee must, in his answer, admit or deny his indebtedness, or that he has, or had, effects in his hands belonging to defendant; and if he is unable to do so, his inability must appear in his answer, together with all the facts plainly, fully and distinctly set forth, so as to enable the Court to give judgment thereon. Answer of garnishee.

§ 3493. Collateral securities in the hands of a creditor shall not be the subject of garnishment at the instance of other creditors. Collaterals not subject to garnishment.

§ 3494. An attorney at law who has money or other effects in his hands belonging to the defendant, shall be subject to be garnished. Attorney at law is subject to garnishment.

§ 3495. A receiver appointed by a Court of Equity shall not be subject to the process of garnishment. Receivers not subject to garnishment.

§ 3496. All journeymen, mechanics, and day laborers shall be exempt from the process and liabilities of garnishment on their daily, weekly, or monthly wages, whether in the hands of their employers or others. Laborers' wages exempt from garnishment.

§ 3497. As a general rule, the interest of a legatee or distributee is not the subject of garnishment issued against an executor or administrator, but if the legacy has been assented to by the executor, and such legacy is not defeated by debts against the estate, and when there has been a final settlement by the administrator, and there remains in his hands a fixed balance, such legacy or the interest of the distributee, or heir, may be reached by the process of garnishment, at the instance of a creditor of such legatee, distributee, or heir at law, as the case may be. When legatees, etc. are subject to garnishment.

§ 3498. In every case a garnishment may be issued against an executor or administrator for a legacy or distributive share, [or for any debt or demand owing by said estate to any other person,] (a) if the creditor will swear—in addition to the oath required in ordinary cases—that his debtor resides without the State, or is insolvent. In such cases the executor or administrator shall not be compelled to answer the garnishment until the estate in his hands is sufficiently administered to enable him safely to answer the same. Executors, etc. may be garnished — when.

(a) Acts of 1865-6, p. 33.

Chapter 5.—Garnishments.

Tax Collect-
or may issue
garnishment

How served
and returned

§ 3499. When any Tax Collector can find no property of the defendant, on which to levy any tax execution in his hands, it shall be his duty to make an entry to that effect on said execution; and such Tax Collector may then issue summons of garnishment against any person, whom he may believe is indebted to the defendant, or who may have property, money, or effects in his hands when said summons of garnishment shall be served by the Tax Collector, the Sheriff, his deputy, or any Constable of the County in which the garnishee may reside, at least fifteen days before the sitting of the Court to which the same is made returnable, and returned to the Superior Court of the County for which he is Tax Collector.

Proceedings
on garnish-
ment.

§ 3500. Said Tax Collector shall enter on said execution the names of the persons garnished, and return said execution to said Superior Court, and all the subsequent proceedings shall be the same as now provided by law in relation to garnishments in other cases, when judgment has been obtained, or execution issued.

TITLE IV.

OF THE VERDICT AND JUDGMENT.

CHAPTER I.

VERDICT AND JUDGMENT.

ARTICLE 1.—*Of the Verdict and its Reception.*

ARTICLE 2.—*Entering Judgment.*

ARTICLE 3.—*Effect and Lien of Judgment.*

ARTICLE 4.—*Of Attacking Judgments.*

ARTICLE 5.—*Transfer of Judgments.*

ARTICLE 6.—*Confession of Judgments.*

ARTICLE 7.—*Dormant Judgments and Revival thereof.*

Article 1.—The Verdict and its Reception.

ARTICLE I.

OF THE VERDICT AND ITS RECEPTION.

SECTION.

3501. Verdict must cover the issues.
 3502. Must show on what plea found.
 3503. Construction of verdicts.
 3504. Moulding verdicts.
 3505. Verdicts in trover.

SECTION.

3506. Election as to verdict.
 3507. For a total divorce.
 3508. For a partial divorce.
 3509. Reception of verdicts.

§ 3501. The verdict must cover the issues made by the pleadings, and must be for the plaintiff or defendant.

Verdict must cover the issues.

§ 3502. If there are several pleas filed by the defendant, a verdict for the defendant must show upon which of the pleas the verdict is rendered. The jury may render such verdict upon all the pleas if they see proper so to do.

Must show upon what plea it is found.

§ 3503. Verdicts are to have a reasonable intendment, and are to receive a reasonable construction, and are not to be avoided unless from necessity.

Construction of verdicts.

§ 3504. It shall be within the power of the Superior Court, in proper case, to mould the verdict at law so as to do full justice to the parties, and in the same manner as a decree in equity, and the judgment and execution shall conform to the verdict.

Moulding verdicts.

§ 3505. In an action of trover the verdict may be in the alternative; that is, it must be for the value of the property sued for, which may be discharged by the return of the property within a given time specified in the verdict.

Verdict in trover.

§ 3506. It shall be at the option of the plaintiff, in an action to recover personal property, to say upon the trial thereof whether he will accept an alternative verdict for the property or its value, or whether he will demand a verdict for the damages alone, or for the property alone, and its hire, if any; and it shall be the duty of the Court to instruct the jury to render the verdict as the plaintiff may thus select.

Plaintiff may choose verdict.

§ 3507. The form of a verdict in case of a total divorce, may be as follows—to wit: We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce—that is to say, a divorce *a vinculo matrimonii*, upon legal principles, between the parties in this case.

Verdict for total divorce.

§ 3508. In cases of a partial divorce, the form of a verdict may be as follows—to wit: We, the jury, find that sufficient proofs

Verdict for partial divorce.

Article 2.—Entering Judgment.

have been submitted to our consideration to authorize a partial divorce between the parties—that is to say, a divorce *a mensa et toro* upon legal principles. That the plaintiff shall pay — on the — day of — to the defendant during her natural life the sum of — dollars for the support and maintenance of the issue of such marriage during their natural lives.

Verdicts—
how receiv-
ed.

§ 3509. Verdicts shall not be received except in open Court, unless by agreement of the parties.

ARTICLE II.

OF ENTERING JUDGMENT.

SECTION.

- 3510. Judgments—when to be entered.
- 3511. Appeal suspends judgment.
- 3512. Judgment for principal and interest
- 3513. Judgment on appeals.
- 3514. Against sureties and indorsers.

SECTION.

- 3515. Against executors, etc.
- 3516. Costs against executors, etc.
- 3517. Judgments on bonds.
- 3518. In favor of and against partners, etc

Judgment
—how and
when signed
up.

§ 3510. In all cases when a verdict shall be rendered, the party in whose favor it may be, or his attorney, shall be allowed to enter and sign up judgment thereon at any time within four days after the adjournment of the Court at which such judgment was rendered, for the amount thereof and all costs recoverable thereon, and no execution shall issue on any verdict until such judgment shall be entered up and signed by the party or his attorney.

Appeal sus-
pends judg-
ment.

§ 3511. If a judgment be entered within the time allowed for entering an appeal, and such appeal be entered, the judgment will be suspended.

Judgment
for principal
and interest.

§ 3512. In all cases where judgment may be obtained, such judgment shall be entered up for the principal sum due, with interest; *provided* the claim upon which it was obtained draws interest—but no part of such judgment shall bear interest except the principal which may be due on the original debt.

Judgment
on appeals.

§ 3513. In all cases of appeal, where security has been given, the plaintiff, or his attorney, may enter up judgment against the principal and surety, jointly and severally, and execution shall issue accordingly, and proceed against either or both, at the option of the plaintiff, until his debt is satisfied.

§ 3514. In all judgments against sureties or indorsers on any bill of exchange, promissory note, or other instrument in writing,

Article 3.—The Effect and Lien of Judgments.

the plaintiff, or his attorney, shall designate and identify the relation of the parties under the contract on which such judgment is rendered, and execution shall issue accordingly. Judgment against sureties and indorsers.

§ 3515. In a suit against an executor or administrator, in his representative character, the judgment must be *de bonis testatoris*, except when he pleads *ne unques executor*, or a release to *himself*, or *plene administravit*, or *plene administravit præter*, and his plea is found against him; in which case the judgment is, that the plaintiff recover both the debt and costs, in the first place to be levied of the goods and chattels, lands and tenements of the deceased, if to be found, and if not to be found, then to be levied of the personal goods and chattels, lands and tenements of the defendant. Judgment against executors and administrators

§ 3516. When the verdict of a jury is against an executor or administrator, or other trustee, in his representative character, a judgment for costs should be entered against him in the same character. Judgment for cost against executors, etc.

§ 3517. All judgments entered against the obligors of any bond, whether official or voluntary, shall be for the amount of damnification found by the verdict of a jury, and not for the penalty thereof. Judgment on bonds.

§ 3518. Judgments entered up, or executions issued in favor of or against co-partners, when the partnership style is used therein instead of the individual names of such persons comprising said firm, shall be good. Judgments in favor of or against firms.

ARTICLE III.

OF THE EFFECT AND LIEN OF JUDGMENTS.

SECTION.

- 3519. Conclusiveness of judgment.
- 3520. Judgments at same term equal.
- 3521. Rank of affirmed judgments.
- 3522. Dignity of judgments.
- 3523. Prevent alienation—when.

SECTION.

- 3524. Do not bind choses in action.
- 3525. Lien on property transferred.
- 3526. On property removed from State.
- 3527. In trespass and trover.
- 3528. Sale of land—purchase money.

§ 3519. The judgment of a Court of competent jurisdiction is conclusive between parties and privies as to the facts which it decides until reversed or set aside. Conclusiveness of judgments.

§ 3520. All judgments signed on verdicts rendered at the same term of the Court shall be considered held and taken to be of equal date, and no execution shall be entitled to any preference Judgments at same term of equal date.

Article 3.—The Effect and Lien of Judgments.

by reason of being first placed in the hands of the levying officer.

Rank of judgments affirmed by Supreme Court.
 § 3521. A judgment in the Superior Court, which is taken to the Supreme Court and affirmed, loses no lien or priority by the proceeding in the Supreme Court, but takes effect from the first judgment.

Dignity and binding effect of judgments.
 § 3522. All judgments obtained in the Superior, Inferior, Justices', or other Courts of this State, shall be of equal dignity, and shall bind all the property of the defendant, both real and personal, from the date of such judgment, except as otherwise provided in this Code.

First judgment prevents alienation in cases of appeal.
 § 3523. In all cases where a verdict shall be rendered, and judgment signed up thereon, and an appeal shall be entered from such verdict, the property of the defendant shall not be bound by the first verdict and judgment, except so far as to prevent the alienation by the defendant of his property between the signing of the first judgment and the signing of the judgment on the appeal, but shall be bound from the signing of such judgment on the appeal.

Judgments do not bind choses in action.
 § 3524. A judgment has no lien upon promissory notes in the hands of the defendant, nor are choses in action liable to be seized and sold under execution, unless made so specially by statute.

Lien of judgment on transferred property—how discharged.
 § 3525. When any person has *bona fide*, and for a valuable consideration, purchased real or personal property, and has been in the possession of such real property for four years, or of such personal property two years, the same shall be discharged from the lien of any judgment against the person from whom he purchased.

Lien of judgments on property removed from the State.
 § 3526. When a judgment lien has attached on personal property which is removed to another State and sold, if brought back again to this State, it will be subject to the judgment lien.

Effect of judgments in trover and trespass.
 § 3527. When a verdict for damages shall be rendered in favor of a plaintiff in trover or trespass, and a judgment signed thereon, the said verdict and judgment shall not have the effect to change the property which is the subject-matter of the suit, or to vest the same in the defendant in said suit, until after the damages and costs recovered by the plaintiff in such action are paid off and discharged, except so far as to subject such property to be sold under and by virtue of an execution issuing from such judgment in such action of trespass or trover, and to make the

Article 4.—How Attacked, etc.

same liable to the payment of the damages and costs recovered in said action, in preference to any other judgment, order, or decree, against the said defendant in said action of trespass or trover.

§ 3528. When a person holds property under a bond for titles, and the purchase money has been partially paid, the same may be levied on under judgments against such person, and the entire interest stipulated in the bond shall be sold. The proceeds of the sale shall be appropriated, first to the payment of the balance of the purchase money, and the remainder to the judgment liens, according to date. In all such cases, notice of the levy shall be given by the levying officer to the holder of the bond for titles.

Sale of lands where purchase money is partially paid.

ARTICLE IV.

HOW ATTACKED, AND HEREIN OF MOTIONS IN ARREST OF JUDGMENT.

SECTION.

- 3529. Arrest of judgment.
- 3530. Nature of the motion.
- 3531. On account of defective pleadings.
- 3532. Where defects are amendable.
- 3533. When set aside for perjury.

SECTION.

- 3534. Jurisdiction of the motion.
- 3535. Judgments—where attacked.
- 3536. Void judgments.
- 3537. Judgments set aside in equity.
- 3538. How attacked by creditors, etc.

§ 3529. When a judgment has been rendered, either party may move in arrest thereof, or to set it aside for any defect not amendable which appears on the face of the record or pleadings.

Motion in arrest of judgment.

§ 3530. A motion in arrest of judgment differs from a motion for a new trial in this: The former must be predicated on some defect which appears on the face of the record or pleadings, while the latter must be predicated on some extrinsic matter not so appearing. It also differs from a motion to set aside a judgment in this: The motion, in arrest of judgment, must be made during the term at which such judgment was obtained; while a motion to set it aside may be made at any time within the statute of limitations.

Nature of motion in arrest of judgment.

§ 3531. If the pleadings are so defective that no legal judgment can be rendered, the judgment will be arrested or set aside.

For defects in the pleadings.

§ 3532. A judgment can not be arrested or set aside for any defect in the pleadings or record that is aided by verdict, or amendable as matter of form.

Amendable defects no ground of motion.

Article 4.—How attacked, etc.

§ 3533. Any judgment, or verdict, rule, or order of Court, which may have been obtained, or entered up, shall be set aside and be of no effect, if it shall appear that the same was entered up in consequence of corrupt and willful perjury; and it shall be the duty of the Court in which such verdict, judgment, rule, or order, was obtained or entered up, to cause the same to be set aside upon motion and notice to the adverse party; but it shall not be lawful for the said Court to do so, unless the person charged with such perjury shall have been thereof duly convicted, and unless it shall appear to the said Court that the said verdict, judgment, rule, or order, could not have been obtained and entered up without the evidence of such perjured person, saving always to third persons innocent of such perjury, the right which they may lawfully have acquired under such verdict, judgment, rule, or order, before the same shall have been actually vacated and set aside.

Judgments
obtained by
perjury will
be set aside.

§ 3534. All motions to arrest or set aside a judgment must be made to the Court by whom such judgment was rendered, and of which motion the opposite party must have reasonable notice.

Jurisdiction
of the mo-
tion to ar-
rest.

§ 3535. The judgment of a Court of competent jurisdiction can not be collaterally attacked in any other Court for irregularity, but shall be taken and held as a valid judgment until it is reversed or set aside.

Judgments
can not be
collaterally
attacked.

§ 3536. The judgment of a Court having no jurisdiction of the person and subject matter, or void for any other cause, is a mere nullity, and may be so held in any Court when it becomes material to the interest of the parties to consider it.

Judgments
—when void.

§ 3537. The judgment of a Court of competent jurisdiction may be set aside by a decree in chancery for fraud, accident, or mistake, or the acts of the adverse party unmixed with the negligence or fault of the complainant.

Equity may
set aside
judgments.

§ 3538. Creditors or *bona fide* purchasers may attack a judgment for any defect appearing on the face of the record, or pleadings, or for fraud, or collusion, whenever and wherever it interferes with their rights, either at law or in equity.

Judgments
may be at-
tacked by
creditors, etc.

Article 5.—Transfer of Judgments.

ARTICLE V.

OF THE TRANSFER OF JUDGMENTS.

SECTION.

3539. Judgments transferable.

SECTION.

3540. Transfer by attorney of record.

§ 3539. Any plaintiff or transferee may *bona fide*, and for a valuable consideration, transfer any judgment or execution to a third person, and in all cases the transferee of any judgment or execution shall have the same rights, and be liable to the same equities, and subject to the same defenses, as the original plaintiff in judgment was. Judgments may be transferred. 82735

§ 3540. The transfer of a judgment or execution by the attorney of record shall be good to pass the title thereto as against every person, except the plaintiff, or his assignee, without notice. The ratification by the plaintiff shall estop him also from denying the transfer. The receiving of the money shall be such a ratification. Transfer by attorney of record.

ARTICLE VI.

OF CONFESSION OF JUDGMENT.

SECTION.

3541. Confession—when allowed.

3542. Judge may confess in his Court.

SECTION.

3543. Right of confession and appeal.

§ 3541. No confession of judgment shall be entered up but in the County where the defendant resided at the commencement of the action, except expressly provided for by law, nor unless the cause has been regularly sued out and docketed as in other cases. Confession of judgment—where and when allowed.

§ 3542. A Judge of the Superior Court, or Justice of the Peace, may confess a judgment in his own Court. Judge may confess judgment in his own Court.

§ 3543. Either party has a right to confess a judgment without the consent of his adversary, and appeal from such confession without reserving the right so to do. Right of confession, and appeal therefrom.

Article 7.—Dormant Judgments and Revival thereof.

ARTICLE VII.

OF DORMANT JUDGMENTS AND REVIVAL THEREOF.

SECTION.

3544. Judgments need no renewal.
 3545. Revival of dormant judgments.
 3546. Debt on dormant judgments.
 3547. *Scire facias* to revive.

SECTION.

3548. From whence issued.
 3549. Revival against non-residents.
 3550. Judgment—when taken.
 3551. *Scire facias* in favor of assignee.

*Need not
be renewed.

§ 3544. Judgments need not be renewed on the Court roll.

Dormant
judgments
may be re-
vived.

§ 3545. When any judgment obtained in any Court of this State is or shall become dormant, the same may be renewed by action of debt, or *scire facias*, at the option of the plaintiff.

Debt on
judgments—
where to be
brought.

§ 3546. If the action of debt be adopted, it must be brought in the County where the defendant resides, at the commencement of the action.

Scire facias

§ 3547. *Scire facias* to revive a judgment is not an original action, but the continuation of the suit in which the judgment was obtained.

Scire facias
to revive—
where to is-
sue from, etc

§ 3548. A *scire facias* to revive a dormant judgment in the Superior Courts must issue from and be returnable to the Court of the County in which the judgment was obtained, shall be directed to all and singular the Sheriffs of this State, and signed by the Clerk of such Court, who shall make out copies thereof, which shall be served by the Sheriff of the County in which the party to be notified may reside, twenty days before the sitting of the Court to which it is made returnable, and the original returned to the Clerk of the Court from which it issued, and an original and copy shall issue in each County in which any party to be notified may reside.

Revival of
judgments
against non-
residents.

§ 3549. If the defendant, or party to be notified, resides out of this State, a dormant judgment may be revived against such defendant, or his representative, by such process as is now issued in cases where the defendant resides in this State; *provided*, the defendant or party to be notified be served with *scire facias*, by publication in some public gazette of this State once a month for four months previous to the term of the Court at which it is intended to revive said judgment; which service shall be as effectual in all cases as if the defendant or person to be notified had been personally served.

§ 3550. In all cases of *scire facias* to revive a judgment, when

Article 1.—In what Cases Allowed.

service has been perfected as herein provided, such judgment may be revived, on motion, at the first term, without the intervention of a jury, unless the defendant shall put in an issuable plea; in which case the defendant shall be entitled to a trial by a jury, as in other cases.

Judgment
of revival—
when to be
taken.

§ 3551. The *scire facias*, when the judgment has been transferred, shall issue in the name of the original plaintiff for the use of the transferee.

Scire facia
in favor of
assignee.

TITLE V.

OF APPEALS.

CHAPTER I.

OF APPEALS.

ARTICLE 1.—*In what Cases Allowed.*

ARTICLE 2.—*When, by whom, and how Entered.*

ARTICLE 3.—*Effect of Appeals.*

ARTICLE 4.—*How and when Tried.*

ARTICLE I.

IN WHAT CASES ALLOWED.

SECTION.

3552. When either party may appeal.

3553. Appeal from Court of Ordinary.

SECTION.

3554. No appeal on collateral issues.

3555. How collateral issues tried.

§ 3552. In all civil cases (except as hereinafter provided) when a verdict is rendered in the County Court at its semi-annual session, or by a Petit Jury in the Superior Court, and on all confessions of judgments in either of said Courts, either party may, as a matter of right, enter an appeal.

Either party
may appeal.

§ 3553. An appeal lies to the Superior Court from any decision

Article 2.—When, by whom, and how Entered.

An appeal made by the Court of Ordinary, except an order appointing a temporary administrator; [*provided*, that whenever an appeal shall be taken from a decision of the Ordinary, made under Section 2472 of this Code, such appeal shall not operate as a *superseas*, unless the executor or administrator shall first give a good and sufficient bond, payable to the Ordinary and his successors in office, in such sum as the Ordinary may require (not exceeding the amount of the estate in the hands of the administrator), conditioned to pay all costs and damages that may accrue to the estate pending the appeal.] (a)

§ 3554. No appeal shall be allowed in collateral issues ordered by the Court; but the Superior Court may, in its discretion, grant a new trial upon such terms as shall appear reasonable and just; and when such collateral issue is tried in the County Court at its semi-annual session, if the Judge of said Court is dissatisfied with the verdict, he may permit an appeal to the Superior Court at his discretion.

§ 3555. All collateral issues in the Superior Court, unless otherwise directed by law, shall be tried by a special jury. No appeal shall be allowed on a verdict rendered on a dilatory plea filed, unless by express leave of the Court, granted on motion.

ARTICLE II.

WHEN, BY WHOM, AND HOW ENTERED.

SECTION.

- 3556. When appeal shall be entered.
- 3557. Sundays and holidays not counted.
- 3558. By whom appeal may be entered.
- 3559. Cost must be paid and bond given.
- 3560. Attorney may sign for principal.
- 3561. By joint contractors, etc.
- 3562. One or more may appeal.
- 3563. Who and how liable on appeal.

SECTION.

- 3564. Security paying debt has recourse.
- 3565. Executors, etc., need not pay costs.
- 3566. Insolvent may appeal by affidavit.
- 3567. Appeals from Ordinary—costs paid.
- 3568. Ordinary to send up proceedings.
- 3569. Application made to Clerks.
- 3570. Appeals from Inferior Court.

§ 3556. Appeals to the Superior Court must be entered within four days after the adjournment of the Court in which the verdict or judgment was rendered.

§ 3557. Sundays and holidays shall in no case be included in the computation of the time within which an appeal shall be entered.

(a) Acts of 1866, p. 24.

Article 2.—When, by whom, and how Entered.

§ 3558. An appeal may be entered by the plaintiff or defendant in person, or by his attorney at law or in fact, and if by the latter, he must be authorized in writing, which authority shall be filed in the Court in which the case is pending at the time such appeal is entered; but if it is shown to the Court that such authority exists, such Court may allow a reasonable time to file the same, and such appeal shall be dismissed and execution issue without further order; if such authority is not filed within the time allowed, a ratification of an appeal, unauthorized, if made in writing, and filed in the Clerk's office before the next term of the Court, shall render the appeal valid.

May be entered by either party or by attorney.

§ 3559. The appellant (except as hereinafter provided) shall, previous to obtaining such appeal, pay all costs which may have accrued in the case up to the time of entering such appeal, and give bond and security for the eventual condemnation money.

Appellant must pay cost.

§ 3560. If such appeal shall be entered by the attorney at law or in fact, he may sign the name of the principal to said appeal bond, and the principal shall be bound thereby as though he had signed it himself.

Attorney may sign for principal.

§ 3561. When several partners or joint contractors sue or are sued as such, any one of said partners or joint contractors may enter an appeal in the name of such firm or joint contractors, and sign the name of such firm or joint contractors to the bond required by law, which shall be binding on the firm and such joint contractors, as though they had signed it themselves; and in case of corporations, the appeal may be entered by the president or any agent thereof managing the case, or by the attorney of record.

Any partner or joint contractor may appeal.

Corporations may appeal by president, etc.

§ 3562. When there shall be more than one party plaintiff or defendant, and one or more of said parties plaintiff or defendant, desires to appeal, and the others refuse or fail to appeal, such party plaintiff or defendant desiring to appeal, may enter an appeal under such rules and regulations as are provided in this Code.

One or more may appeal.

§ 3563. Upon the appeal of either party plaintiff or defendant, as provided in the previous Section, the whole record shall be taken up and all shall be bound by the final judgment, but in case damages shall be awarded upon such appeal, such damages shall only be recovered against the party appealing and his security, and not against the party failing or refusing to appeal.

All shall be bound by final judgment.

§ 3564. Such security shall be bound for the judgment on the

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Article 2.—When, by whom, and how Entered.

Security appeal, and in case any such security shall be compelled to pay
 has recourse off the debt or damages for which judgment may be entered in
 against the party. the cause, he shall have recourse only against the party for whom
 party. he became security.

Executors, § 3565. Executors, administrators, and other trustees, when
 etc. may ap- sued as such, or defending solely the title of the estate, may enter
 peal without an appeal without paying costs and giving bond and security as
 paying costs, hereinbefore required; but if a judgment should be obtained
 etc. against such executor, administrator, or other trustee, and not the
 assets of the estate, he must pay costs and give security as in
 other cases.

When party § 3566. When any party plaintiff or defendant, in any suit at
 is unable to law, or in equity, shall be unable to pay costs and give security
 pay cost, etc. as hereinbefore required, if such party will make and file an affi-
 davit in writing that he is advised and believes that he has good
 cause of appeal, and that, owing to his poverty, he is unable to pay
 the costs and give the security required by law in cases of appeal,
 such party shall be permitted to enter an appeal without the pay-
 ment of costs or giving security as hereinbefore required.

From Ordi- § 3567. In all cases in the Court of Ordinary, the party desir-
 nary costs ing to appeal, his attorney at law, or in fact, shall pay all costs
 must be that may have accrued, and give bond and security to the Ordi-
 paid, etc. nary for such further costs as may accrue by reason of such ap-
 peal; this being done, the appeal shall be entered.

Must be § 3568. When an appeal has been entered in the Court of Or-
 transmitted dinary it shall be the duty of such Ordinary to transmit the same
 ten days be- to the Clerk of the Superior Court of the County in which such
 fore Court. proceedings may have been had, at least ten days before the next
 Superior Court of said County, to be there tried as other appeals.

Applica- § 3569. All applications to enter an appeal in the Superior or
 tion must be County Courts shall be made to the Clerks respectively, except in
 made to the collateral issues tried in the County Court by order of the Court,
 Clerk. in which case the application must be made to said Court.

How trans- § 3570. When an appeal shall be entered from a verdict in the
 mitted from County Court, it shall be the duty of the Clerk thereof to trans-
 County to mit the same to the Clerk of the Superior Court of the County in
 Superior which the verdict was obtained, by whom it shall be entered on
 Court. the appeal docket and there tried as other appeals.

Article 3.—Effect of Appeal.

ARTICLE III.

EFFECT OF APPEAL.

SECTION.

3571. Investigation on appeal.

3572. Appeal suspends judgment.

SECTION.

3573. Appeals—how withdrawn.

§ 3571. An appeal to the Superior Court is a *de novo* investigation. It brings up the whole record from the Court below, and all competent evidence is admissible on the trial thereof, whether adduced on a former trial or not; either party is entitled to be heard on the whole merits of the case.

Appeal *de novo* investigation of whole case.

§ 3572. An appeal suspends, but does not vacate judgment, and if dismissed or withdrawn, the rights of all the parties are the same as if no appeal had been entered.

Effects of appeal.

§ 3573. No person shall be allowed to withdraw an appeal after it shall be entered but by the consent of the adverse party.

Can not be withdrawn.

ARTICLE IV.

HOW AND WHEN TRIED.

SECTION.

3574. Trial of appeals.

SECTION.

3575. Frivolous appeals.

§ 3574. All appeals to the Superior Courts shall be tried by a special jury at the first term after the appeal has been entered, unless good cause be shown for continuance.

Tried by special jury.

§ 3575. If upon the trial of any appeal it shall appear to the jury that the appeal was frivolous and intended for delay only, they shall assess damages against the appellant and his security, (if any) in favor of the respondent, for such delay, not exceeding twenty-five per cent. on the principal sum which they shall find due, which damages shall be specially noted in their verdict.

Damages for frivolous appeals.

TITLE VI.

OF EXECUTIONS.

CHAPTER 1.—*Of Different Kinds of Executions.*

CHAPTER 2.—*Of the Stay of Executions.*

CHAPTER 3.—*Of the Illegality of Executions.*

CHAPTER 4.—*Of Forthcoming Bonds.*

CHAPTER I.

OF DIFFERENT KINDS OF EXECUTIONS.

ARTICLE 1.—*When and how Issued and Returned.*

ARTICLE 2.—*Of the Levy and Proceedings thereon.*

ARTICLE 3.—*Of Sales under Execution—when and how made.*

ARTICLE 4.—*Of the Satisfaction of Executions.*

ARTICLE I.

WHEN AND HOW ISSUED AND RETURNED.

SECTION.

- 3576. How issued and on what levied.
- 3577. When Sheriff is a party.
- 3578. Affidavit to obtain *ca. sa.*
- 3579. When *fi. fa.* or *ca. sa.* may issue.
- 3580. Returnable to next term.

SECTION.

- 3581. Must follow the judgment.
- 3582. Ejectment—writ of possession.
- 3583. Not to issue against third persons.
- 3584. Judge may frame executions.

§ 3576. Executions (except as hereinafter provided) shall be issued by the Clerks of the several Courts in which judgment shall be obtained, and bear test in the name of one of the Judges or presiding Justices of such Court, and shall bear date from the time of their issuing, and (except as hereinafter provided) shall be directed “to all and singular the Sheriffs of this State and their lawful deputies,” and may be levied on all the estate, both

Executions must be issued by the Clerks, bear test in the name of Judge or Justice, and be directed to the Sheriffs.

Article 1.—When and how Issued and Returned.

real and personal, of the defendant, subject to levy and sale, or they may issue against the body of such defendant, at the option of the plaintiff or his attorney. On what to be levied.

§ 3577. All executions, orders, decrees, attachments for contempt, and final process, to be issued by the Clerks of the Superior Courts in favor of or against any Sheriff of this State, shall be directed to the Coroner of the County in which said Sheriff may reside, and to all and singular the Sheriffs of the State, except the Sheriff of the County in which the interested Sheriff may reside, which may be levied, served, and returned, by the Coroner, or other Sheriff, or a Constable of the County, at the option of the plaintiff or the party seeking the remedy. When Sheriff is a party—how directed. May be served by Constable.

§ 3578. When the plaintiff, or his attorney, desires an execution against the body of a defendant, the plaintiff shall file with the Clerk of such Court, or with the Justice of the Peace, as the case may be, an affidavit stating that he has just cause to believe that the defendant has money or property of his own, within his power or control, which can not be reached by *fi. fa.* (other than that allowed by law), or that the defendant has property beyond the jurisdiction of the Court in which the judgment was obtained, or that the defendant is able, out of his own property, to pay the plaintiff's debt, and willfully refuses so to do; and in every case the affidavit must state of what the property consists, and particularly describe the same. Affidavit to obtain execution against the body.

§ 3579. A *fi. fa.* or *ca. sa.* may issue at any time after a verdict is rendered and judgment entered thereon; but if it is issued before the expiration of the time allowed for entering an appeal, the same will be suspended on the entering of an appeal by either party. *Fi. fa.* or *ca. sa.* may issue at any time, but will be suspended by appeal.

§ 3580. All executions, except as otherwise provided by this Code, shall be made returnable to the next term of the Court from which they issued respectively. Returnable next term.

§ 3581. All executions must follow the judgment from which they issued, and describe the parties thereto as described in such judgment. Must follow the judgment.

§ 3582. When a verdict in ejectment shall be rendered in favor of the plaintiff, and a judgment entered thereon, the Clerk of such Court shall issue a writ of possession, in which the Clerk shall incorporate a clause directing the Sheriff to collect, by levy and sale of the defendant's property, all such sums of money as, Upon judgment in ejectment cases, writ of possession issues with a clause to collect mesne profits and costs.

Article 2.—Ca. Sa.—how Executed, and Proceedings thereon.

by the finding of the jury, shall have been awarded to such plaintiff in ejectment as mesne profits and costs.

§ 3583. The writ of possession shall not issue against third persons not known in the suit on which such writ of possession is founded, nor put in possession by, nor claiming under nor by virtue of, any conveyance from the defendant in such suit.

§ 3584. The Judge of any Superior Court may frame and cause to be issued by the Clerk any writ of execution to carry into effect any lawful judgment or decree rendered in his Court.

ARTICLE II.

OF CA. SA.—HOW EXECUTED, AND PROCEEDINGS THEREON.

SECTION.

3585. *Ca. sa.* returned, *fi. fa.* may issue.

* 3586. Defendant may be released—how.

3587. Discharge of person no satisfaction.

3588. When defendant escapes.

SECTION.

3589. Place of arrest and imprisonment.

3590. Damages for escapes.

3591. County liable—when.

§ 3585. When a *ca. sa.* shall have issued, and the same shall not have been executed, an execution may issue against the property of the defendant on the return of said *ca. sa.*

Ca. sa. may be returned and *fi. fa.* issued.

§ 3586. When a *ca. sa.* shall have been served, the party on whom the same shall have been served, shall be released, provided he shall deliver to the officer serving the same, property which will, in the opinion of such officer, be sufficient to satisfy the debt and all costs, and give bond and sufficient security to the officer making the arrest that the property so delivered is *bona fide* the property of the defendant, and subject to no prior lien to the discharge of the said debt and costs; in which case the officer shall return the *ca. sa.* so issued, and take out an execution against the property of such defendant, and advertise and sell the property so delivered up to satisfy such execution and all costs.

When defendant is arrested, he may be released on delivering property to the officer sufficient to pay the debt and costs.

Officer to take out *fi. fa.* and sell the property.

§ 3587. In all cases where a debtor may have been arrested under a *ca. sa.* and is afterwards discharged from such arrest, either by the authority of the plaintiff, or otherwise, without the debt being paid, such arrest and discharge shall not operate as a satisfaction of the debt, but the debtor's property shall still be liable to the judgment as though no arrest had been made; *provided*, the officer making such arrest shall indorse on such *ca. sa.* that the defendant was discharged from arrest without paying the

Arrest and discharge without payment is not a satisfaction of the debt.

Officer shall make entry on *ca. sa.*

Article 2.—Ca. Sa.—how Executed, and Proceedings thereon.

amount due on such *ca. sa.* The plaintiff can not release a defendant arrested under *ca. sa.* so as to proceed against his property without the consent of such defendant.

§ 3588. Whenever any officer shall arrest a defendant on a *ca. sa.* and such defendant shall make his escape, and said officer shall be compelled to pay the amount due on said *ca. sa.* by reason of said escape, such officer shall have the control of the *feri facias* issued, or to be issued on the judgment upon which said *ca. sa.* is founded, for the purpose of reimbursing himself out of the property of the defendant, and the said arresting officer shall control said *feri facias* in as full and ample a manner as the plaintiff in said *feri facias* might or could have done had said *ca. sa.* never issued, or had the money due on said judgment not have been paid by such officer; *provided*, that the Court by whose order or judgment such officer shall be required to pay the amount due shall pass an order giving such control.

If defendant escapes and officer pays the money, he shall have control of the *fi. fa.*

By order of Court.

§ 3589. Whenever any decree, order, *ca. sa.*, attachment for contempt, or other final process, directed as required by this Code, shall be placed in the hands of any Sheriff, or other arresting officer, and under and by virtue of said process it shall become the duty, under the laws of this State, for said Sheriff, or other officer, to imprison any defendant, or other delinquent, it shall be the duty of such Sheriff, or other officer, to arrest such delinquent wherever found, and it shall be his duty to imprison him in the County where such arrest was made, or in the County where the arresting officer may reside, at the option of the party requiring the services of such Sheriff, or other officer. If there is no jail, or the jail is insufficient, the person arrested may be imprisoned in the jail of an adjoining County.

Officer may arrest wherever defendant can be found.

And imprison in that County or the County of the arresting officer.

§ 3590. In all cases of escape of persons arrested for debt, by a Sheriff, or other officer, the measure of damages for the plaintiff against the officer shall be the actual loss sustained by the plaintiff, unless it shall appear that the officer voluntarily permitted the escape, or connived at it, or was guilty of great negligence, in which case he shall pay the full amount due to the plaintiff.

In cases of escape, the measure of damages against the officer is the actual loss.

§ 3591. If the escape was effected by reason of the inefficiency of the jail, the creditor may recover of the County the same amount which he could have recovered of the Sheriff for an involuntary escape.

Escape by reason of insufficiency of jail—County liable.

Article 3.—Fi. Fa.—how Levied, and Proceedings thereon.

ARTICLE III.

OF FI. FA.—HOW LEVIED, AND PROCEEDINGS THEREON.

SECTION.

3592. What levy must contain.

3593. On what to be levied first.

3594. Growing crops exempt—exceptions

SECTION.

3595. Notice of levy on land.

3596. Land—where sold, etc.

3597. Constable levying on land, etc.

Levy must
describe prop-
erty, etc.

§ 3592. The officer making a levy shall always enter the same on the process by virtue of which such levy is made, and in such entry shall plainly describe the property levied on, and the amount of the interest of defendant therein.

Property
in possession
of defendant
first levied
on.

§ 3593. When a defendant in *fi. fa.* shall point out any property on which to levy the execution, such property being in the hands or possession of a person not a party to the judgment from which such execution issued, the Sheriff, or other officer, shall not levy thereon, but shall proceed to levy on such property as may be found in the hands and possession of the defendant, who shall nevertheless be at liberty to point out what part of his property he may think proper, which the Sheriff, or other officer, shall be bound to take and sell first, if the same is, in the opinion of such levying officer, sufficient to satisfy such judgment and costs.

Defendant
may point
out.Growing
crop not to
be levied on
until matur-
ed.

§ 3594. No Sheriff, or other officer, shall levy on any growing crop of corn, wheat, oats, rye, rice, cotton, potatoes, or any other crop usually raised or cultivated by the planters or farmers of this State, nor sell the same until such crop shall be matured and fit to be gathered; *provided*, this provision shall not prevent any levying officer from levying on and selling crops as heretofore practiced in cases where the debtor absconds or removes from the County or State, or from selling growing crops with the land.

Exceptions.

Levying on
land must
give notice
in five days.

§ 3595. The officer levying on land under an execution shall, within five days thereafter, leave a written notice of such levy with the tenant in possession of the land, if any, or with the defendant, if in the County, or transmit such notice by mail to the defendant within the time aforesaid.

Officer not
to sell land
out of his
County.

§ 3596. A sheriff, or other levying officer, shall not sell land out of the County in which he is Sheriff, or such officer, except when the defendant in execution shall own a tract or tracts of land divided by the line of the County of his residence, in which case it may be sold in the County of his residence; or if such tract of land is in other than that of the defendant's residence, it

Article 4.—Sales under Execution—when and where made.

may be levied on and sold in either County. In all cases of levying on land, written notice of such levy must be given to the tenant in possession, and to the defendant, if not in possession.

Notice of
levy must be
given.

§ 3597. No Constable (except as provided by this Code) shall be authorized to levy on any real estate, unless there is no personal estate to be found sufficient to satisfy the debt, or such real estate, being in the possession of the defendant, was pointed out by such defendant, which he has a right to do, and then such Constable is authorized to levy on such real estate, if to be found in his County, and deliver over the execution to the Sheriff of the County, with a return of the property levied upon, who shall proceed to advertise and sell the same as in case of levies made by himself.

When real
estate shall
not be levied
on.

Must return
execution to
Sheriff.

ARTICLE IV.

OF SALES UNDER EXECUTION—WHEN AND WHERE MADE.

SECTION.

- 3598. Place, time, and manner of sales.
- 3599. Notice of Sheriff sales.
- 3600. Change of advertising.
- 3601. Purchaser to be put in possession.
- 3602. May be obtained by order of Court.

SECTION.

- 3603. Widow claiming dower, and lessee.
- 3604. Execution for purchase money.
- 3605. Purchaser failing to comply.
- 3606. Action against purchaser.

§ 3598. No sales shall be made, by the Sheriffs or Coroners, of property taken under execution but at the Court House of the County where such levy was made, on the first Tuesday in each month, between the hours of 10 A. M. and 4 P. M., and at public outcry.

Place, time,
and manner
of sales.

§ 3599. It shall be the duty of the Sheriffs and Coroners [to publish weekly, for four weeks,] (a) in some newspaper published in their Counties respectively—and if there be no such paper published in the County, then in the nearest newspaper having the largest or a general circulation in such County—notice of all such sales of land and other property executed by him, in which advertisement he shall give a full and complete description of the property to be sold, making known the name of the plaintiff and defendant, and the person who may be in the possession of such property, except horses, hogs, and cattle, which may be sold at any time by the consent of the defendant; in which case, it shall be the duty of

Four weeks'
notice of
Sheriff's
sales to be
given.

What cattle
may be sold
after ten
days' notice.

(a) Acts of 1866, p. 163.

Article 4.—Sales under Execution—when and where made.

such officer to give the plaintiff ten days' notice thereof, and also to advertise the same at three or more public places in the County where such property may be, at least ten days before the sale.

§ 3600. No Sheriff, Coroner, or other officer, shall change the advertising connected with his office from one paper to another, without first giving notice of his intention to do so in the paper in which his advertisements may have been published.

Notice of
change must
be given.

§ 3601. When any Sheriff, or other officer, shall sell any real estate by virtue of and under any execution, it shall be the duty of such Sheriff, or other levying officer, upon application, to put the purchaser, his agent, or attorney, in possession of the real estate sold; *provided*, that the provisions of this Code shall not authorize the officer to turn out any other person than the defendant, his heirs, or their tenants, or assignees, since the judgment.

Officer sell-
ing real es-
tate shall put
purchaser in
possession.

§ 3602. If the purchaser of real estate, at Sheriff's and other sales under execution, shall fail to make application for possession thereof until the next term of the Superior Court after such sale takes place, or until the officer making such sale goes out of office, such possession can only be obtained under an order of said Superior Court.

Possession—
how obtain-
ed.

§ 3603. The widow of the defendant claiming dower can not be dispossessed of the mansion, nor can a lessee whose lease is older than the judgment under which the sale was made, be dispossessed under the provisions of the two preceding Sections.

Widow and
lessee can
not be dis-
possessed.

§ 3604. When any judgment shall be rendered in any of the Courts of this State, upon any note, or other evidence of debt given for the purchase money of land, when titles have not been made, but a bond for titles given, it shall and may be lawful for the obligor in said bond to make and file, and have recorded in the Clerk's office of the Superior Court of the County wherein the land lies, a good and sufficient deed of conveyance to the defendant for said land, and if the said obligor be dead, then his executor or administrator may, in like manner, make and file such deed without obtaining an order of the Court for that purpose; whereupon the same may be levied on and sold under said judgment as in other cases; *provided*, that the said judgment shall take lien upon the land prior to any other judgment or incumbrance against the defendant.

Purchaser
failing to
comply
where bond
for titles
has been
given.

This judg-
ment takes
prior lien.

§ 3605. Any person who may become the purchaser of any real

Article 5.—The Satisfaction of Executions.

or personal estate at any sale which may be made at public outcry by any Sheriff or other officer, under and by virtue of any execution or other legal process, and shall fail or refuse to comply with the terms of such sale when requested so to do, shall be liable for the amount of such purchase money, and it shall be at the option of such Sheriff or other officer, either to proceed against such purchaser for the full amount of the purchase money, or to re-sell such real or personal estate and then proceed against the first purchaser for the deficiency arising from such sale.

Purchaser
at sale under
execution
liable--when

§ 3606. The action provided for in the preceding Section may be brought in the name of the Sheriff or other officer making the sale, for the use of the plaintiff or defendant in execution, or any other person in interest, as the case may be.

Form of ac-
tion against
such pur-
chaser.

ARTICLE V.

OF THE SATISFACTION OF EXECUTIONS.

SECTION.

3607. Levy on personalty unexplained.

3608. Release of property subject.

SECTION.

3609. Fund applied to younger *fi. fa.*

3610. Agreement not to enforce judgment.

§ 3607. A levy upon personal property sufficient to pay the debt unaccounted for, is *prima facie* evidence of satisfaction to the extent of the value of such property, and the dismissal of such levy unexplained is an abandonment of the lien so far as third persons are concerned.

Levy on
personalty
unexplain-
ed.

§ 3608. If the plaintiff in execution, for a valuable consideration, releases property which is subject thereto, it is a satisfaction of such execution to the extent of the value of the property so released, so far as purchasers and creditors are concerned.

A release
of property
subject.

§ 3609. If an execution creditor, having the older lien on a fund in the hands of the Sheriff or other officer, allows such fund by his consent to be applied to a younger *fi. fa.*, it shall be considered an extinguishment *pro tanto* of such creditor's lien so far as third persons may be concerned.

Fund ap-
plied to
younger *fi. fa.*

§ 3610. An agreement for a valuable consideration never to enforce a judgment or execution, releases the judgment or execution.

Agreement
not to en-
force judg-
ment.

CHAPTER II.

OF THE STAY OF EXECUTIONS.

SECTION.

3611. Defendant may stay execution.

3612. *Fi. fa.* to be stayed sixty days.

SECTION.

3613. Security to have control—when.

§ 3611. In all cases in the Superior Court where a verdict shall be rendered, the party against whom the same may be, may, either in open Court or in the Clerk's office, within four days after the adjournment thereof, enter into bond with good and sufficient security for the payment of such verdict or judgment and costs, within sixty days.

Defendant
may stay ex-
ecution.

§ 3612. Bond and security being given as provided in the preceding Section, the verdict and judgment, or the execution thereon, shall be suspended for the said sixty days, and if the party shall fail to pay the said verdict or judgment within that time, execution shall then issue against such party and his security without further proceedings thereon.

Execution
to be stayed
—when.

§ 3613. The security paying off such judgment or execution, shall have control thereof.

Security to
have control

CHAPTER III.

OF THE ILLEGALITY OF EXECUTIONS.

SECTION.

3614. Illegality—how taken.

3615. No illegality before levy and arrest.

3616. Proceedings stayed and returned.

3617. Damages, if for delay only.

SECTION.

3618. No judicial interference.

3619. May be sold under other *fi. fas.*

3620. Who may file affidavit.

3621. Illegality not to go behind judgm't.

§ 3614. When an execution against the property or against the body of any person shall issue illegally, or shall be proceeding illegally, and such execution shall be levied on property, or the body of the defendant shall be arrested by virtue thereof, such person may make oath in writing, and shall state the cause of such illegality and deliver the same to the Sheriff or other executing officer, as the case may be, together with bond and good security for the forthcoming of such property as provided by this Code, or for the appearance of the defendant as provided in cases of insolvent debtors.

Execution
proceeding
illegally may
be stopped
—how.

Chapter 3.—The Illegality of Executions.

§ 3615. No affidavit of illegality shall be received by any Sheriff or other executing officer until a levy or an arrest has been made, as the case may be.

No affidavit
of illegality
—when.

§ 3616. When the levy or arrest shall have been made, and affidavit and bond delivered to the officer as herein provided, it shall be the duty of such officer to suspend further proceedings on such execution, and return the said execution, affidavit, and bond, to the next term of the Court from which the execution issued, and it shall be the duty of said Court to determine thereon at the first term thereof, unless the plaintiff, or his attorney, desire to controvert the facts contained in said affidavit, in which case an issue shall be joined, which issue shall be tried by a jury at the same term, unless good cause is shown for a continuance.

Proceedings
to be stayed
and papers
returned to
Court, etc.

§ 3617. Upon the trial of an issue formed on an affidavit of illegality, filed in the Superior or Inferior Courts, the jury trying the case shall have power to assess such damages, not exceeding twenty-five per cent., as may seem reasonable and just, upon the principal debt, provided it shall be made to appear that such illegality was interposed for delay only.

Damages
if interposed
for delay only.

§ 3618. No replevin shall lie, nor any judicial interference be had, in any levy or distress for taxes under the provisions of this Code, but the party injured shall be left to his proper remedy in any Court of law having jurisdiction thereof.

No judicial
interference
to be had.

§ 3619. When an execution has been levied on property, and an affidavit of illegality filed to stay proceedings thereon, the property so levied on shall be subject to levy and sale under other execution, and the officer making the first levy shall claim, receive, hold, and retain such amount of the proceeds of the sale as the Court shall deem sufficient to pay the execution first levied, including interest up to the time of the Court at which said illegality shall be determined; and any bond given by the defendant on filing such affidavit shall be released and discharged so far as relates to the property sold.

Property
may be sold
under other
executions.

§ 3620. An affidavit of illegality may be filed by an attorney in fact, or an executor, administrator, or other trustee.

By whom
affidavit may
be filed.

§ 3621. If the defendant has not been served, and does not appear, he may take advantage of the defect by affidavit of illegality; but if he has had his day in Court, he can not go behind the judgment by an affidavit of illegality.

When illegality can
not go behind
judgment.

Art 11, § 6, Constitution 1868.

May file (Agent may) Affidavit

CHAPTER IV.

OF FORTHCOMING BONDS.

SECTION.

3622. Forthcoming bonds may be taken.

3623. All bonds to officers good.

SECTION.

3624. Shall not prejudice plaintiffs.

When forth-
coming bond
may be giv-
en.

§ 3622. When an execution shall be levied on personal property, and an illegality filed thereto as provided by this Code, and the party filing such illegality desires to take or keep possession of such property, he shall deliver to the Sheriff, or other levying officer, a bond, payable to the levying officer, with good security, in a sum equal to double the value of the property so levied upon, to be judged of by the levying officer, conditioned for the delivery of the property levied upon at the time and place of sale, in the event that such illegality shall be dismissed by the Court or withdrawn, which bond shall be recoverable in any Court having cognizance thereof.

Bond taken
by executing
officers.

§ 3623. All bonds taken by the Sheriffs or other executing officers, from the defendants in execution, for the delivery of property (on the day of sale or at any other time) which they may have levied on by virtue of any *fi. fa.*, or other legal process from any Court, shall be good and valid in law, and recoverable in any Court in this State having jurisdiction thereof.

The rights
of plaintiffs
in *fi. fa.*

§ 3624. No bond taken in conformity with the previous Section shall, in any case, prejudice or affect the rights of plaintiff in execution, but shall relate to, and have affect alone between the officer to whom it is given and the defendant in execution; and such officer shall, in no case, excuse himself for not having made the money on an execution by having taken such bond, but shall be liable to be ruled as now prescribed by law.

TITLE VII.

COSTS IN CIVIL CASES.

CHAPTER 1.—*Costs in Civil Cases.*CHAPTER 2.—*Fees of Officers of Court.*

CHAPTER I.

OF COSTS IN CIVIL CASES.

ARTICLE 1.—*How Taxed.*ARTICLE 2.—*How Collected.*

ARTICLE I.

HOW TAXED.

SECTION.

3625. Party failing, liable for costs.
 3626. Attorney liable for neglect.
 3627. When liable in other cases.
 3628. Cost—when recovery less than \$50.
 3629. When costs to be paid in advance.

SECTION.

3630. Costs in slander cases.
 3631. Costs in personal actions.
 3632. Costs of witnesses.
 3633. Revenue stamps—how taxed.

§ 3625. In all civil cases, in any of the Courts of this State (except as provided for by this Code), the party who shall discontinue, fail, or be cast in such suit, shall be liable for the costs thereof. Party failing liable for costs.

§ 3626. If any plaintiff shall be non-suited, or cast, by reason of the willful neglect or misconduct of his attorney, such attorney shall be liable for the costs which may have accrued in such case; and in like manner, if any defendant shall be cast by reason of the willful neglect or misconduct of his attorney, such attorney shall be liable for the costs thereof. Attorney liable for costs for willful neglect.

§ 3627. When any attorney shall institute a suit in any of the Courts of this State for any person who resides out of this State, such attorney shall be liable to pay all costs of the officers of Court, in case such suit shall be dismissed, or the plaintiff be cast in his suit. Attorney liable for costs—when

Article 1.—How Taxed.

When recovery is less than \$50.

§ 3628. When any action *ex contractu* shall be brought to the Superior Court, and the verdict of the jury, unreduced by matter of set-off or payment pending the action, shall be for a sum under fifty dollars, the defendant shall not be charged with more costs than would have necessarily accrued if such case had been before a Justice of the Peace; and the remainder of the Court charges shall be paid by the plaintiff, and may be retained out of the sum recovered by the plaintiff, and, if that is insufficient, judgment shall be entered by the Court against such plaintiff for the balance.

Costs may be demanded in advance.

§ 3629. When the plaintiff and his attorney both reside out of the limits of this State, the proper officers may demand their full costs before they shall be bound to perform any service in any cause about to be commenced by such non-resident attorney or plaintiff.

No more costs than damages—when.

§ 3630. In all actions upon the case for slanderous words, in any Court having jurisdiction of the same, if the jury shall render a verdict under ten dollars, then the plaintiff in such action shall have and recover no more costs than damages.

Costs in personal actions.

§ 3631. In actions of assault and battery, and in all other personal actions, wherein the jury upon the trial thereof shall find the damages to be less than ten dollars, the plaintiff shall recover no more costs than damages, unless the Judge, at the trial thereof, shall find and certify on the record that an aggravated assault and battery was proved.

Costs of witnesses of adverse party.

§ 3632. No party plaintiff or defendant shall be liable for the costs of any witness of the adverse party, unless such witness was subpoenaed, sworn, and examined, on the trial of said cause (or the plaintiff voluntarily dismisses his cause before trial), and no party shall be liable for the costs of more than two witnesses to the same point, unless the Court shall certify that the question at issue was of such a character as rendered a greater number of witnesses necessary to a single point.

Revenue stamps taxed as costs.

§ 3633. [The amount of all revenue stamps used upon affidavits, declarations, bills, judgments, executions, and any other writ, process, order, or decree, issued by any Court of this State, upon which a revenue stamp has to be used, shall be taxed in the bill of costs against the defendant, in all cases in which the defendant is cast in the suit.] (a)

Article 2.—How Collected.

ARTICLE II.

HOW COLLECTED.

SECTION.

3634. When cost demandable.
3635. Costs included in judgment.

SECTION.

3636. Plaintiff liable—attorney liable.
3637. Judgment against attorney for cost.

§ 3634. The manner of collecting costs in all civil cases, in any of the Courts in this State (except as otherwise provided in this Code), shall be as follows: The several officers of Court are hereby prohibited from demanding the costs in any civil case, or any part thereof, until after judgment in the same, except as provided in the case of non-resident plaintiffs and attorneys. Costs—
when de-
mandable.

§ 3635. When a case is disposed of, the costs of the same, including fees of witnesses, shall be included in the judgment against the party dismissing, being non-suited, or cast. Costs—how
taxed.

§ 3636. If the plaintiff should recover a judgment against the defendant, and execution issue thereon, and the executing officer shall return the same "no property to be found," a *fi. fa.* or *ca. sa.* may issue against such plaintiff for the purpose of making said cost out of him; and if the plaintiff resides out of the State, the *fi. fa.* shall issue against the attorney also. On return of
nulla bona. *369a606.*

§ 3637. In all cases in which it is made to appear that an attorney is liable for costs by the provisions of this Code, the Court shall, on motion, order a judgment and execution against him for the same. Execution
against at-
torney for
costs.

CHAPTER II.

FEES OF OFFICERS OF COURT.

SECTION.

3638. Fees of Clerk of Supreme Court.
3639. Judges may increase or diminish.
3640. Fees of Sheriff of Supreme Court.
3641. Contingent expenses Supreme C't.
3642. Contingent expenses Superior C't.
3643. Fees of Ordinary.
3644. Fees of Clerks of Superior Courts.
3645. Fees of Clerks of Inferior Courts.
3646. Fees of Sheriffs.
3647. Fees of Jailors.
48. Fees of Justices of the Peace.

SECTION.

3649. Fees of Constables.
3650. Fees of Coroners.
3651. Fees of County Surveyors.
3652. Fees of County Treasurers.
3653. Fees of Notaries Public.
3654. Fees not to be charged to the State.
3655. Statement of fees may be demanded.
3656. Charging fees unlawfully.
3657. Table of fees to be kept in office.
3658. Treble costs—suits against officers.
3659. Dismissal from office.

Chapter 2.—Fees of Officers of Court.

§ 3638. The Clerk of the Supreme Court is entitled to the following fees—to wit:

Fees of Clerk
of Supreme
Court.

[For each case entered and carried to judgment.....	\$6 00
For recording bills of exception for every 100 words.....	12½
For recording opinion.....	6 00
For remitter, including certificate and seal. (a)..	2 00]

§ 3639. The Judges of the Supreme Court may, on application of any practicing attorney of the Court, decrease such bill of costs, or, on the application of the Clerk, increase it, or add other items thereto. Due notice in writing must be given of the grounds of the motion, and the decision announced by one of the Judges in open Court.

Judges may
diminish or
increase
costs.

§ 3640. The Sheriff of the Supreme Court is entitled to the fees following—to wit:

Fees of Sher-
iff Supreme
Court, etc.

For each case entered and carried to judgment.....	\$1 25
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Such fee must be charged in the bill of costs, collected by the Clerk and paid to the Sheriff.

§ 3641. Any contingent expenses incurred in holding the several sessions of the Supreme Court, for lights, fuel, rent, and stationery, etc., shall be paid to the Clerk of said Court out of the State Treasury, on the certificate of the Judges thereof as to the necessity and fact of such expenditure.

Contingent
expenses of
Supreme
Court.

§ 3642. Any contingent expenses incurred in holding any session of the Superior Court, including the above and similar items, such as taking down testimony in cases of felony, etc., shall be paid out of the County Treasury of such County, upon the certificate of the Judge of the Superior Court, and without further order.

Contingent
expenses of
Superior
Court.

§ 3643. The Ordinaries are entitled to the following fees—to wit:

Fees of
Ordinary.

For receiving application and granting citation.....	\$1 25
For taking and recording administrators' or guardians' bond.....	1 00
For issuing letters of administration, or letters testamentary.....	1 50
For recording the same.....	50
For copying the same.....	50
For signing warrant of appraisement.....	50
For receiving an appraisement or sale bill, and recording the same, if under five hundred dollars.....	1 00
If above five hundred dollars, and under two thousand.....	1 25
If above two thousand, and under ten thousand dollars.....	1 50
If above ten thousand, and under twenty thousand dollars.....	1 75

Chapter 2.—Fees of Officers of Court.

If above twenty thousand, and under fifty thousand dollars.....	\$2 00
If above fifty thousand dollars.....	2 50
For receiving application and granting letters dismissory, whole service,	5 00
For granting citation to show cause why administration should not be set aside or repealed.....	2 00
For entering a <i>caveat</i> against administration being granted or will proven	1 25
For each copy of <i>caveat</i>	50
[For signing probate of will or codicil.....	1 25
For each case litigated before the Ordinary where no fees are pre- scribed.....	3 00
For issuing commissions to examine witnesses.....	1 25
For commission to have one year's support set apart to widow, minor, or minors.....	1 25
For recording the same.....	1 00
For examining books and giving extract.....	1 00
For every order passed where no fees are prescribed.....	50
For each affidavit when no cause is pending.....	30
For every service required and performed, for which no fees are specified by law, the same fees as are allowed Clerks of the Superior Courts for similar services, or for a like amount of labor.] (a)	
For every marriage license.....	1 50
For every order for sale of land, or other property.....	50
For each copy of the same.....	25
For issuing letters of guardianship.....	1 00
For recording the same.....	50
For rule <i>ni si</i> , in each case.....	50
For copy.....	25
For issuing process against a person for not making returns.....	50
For each additional copy.....	25
For each subpoena.....	15
For examining and recording returns on all estates not worth more than two thousand dollars.....	1 00
For all estates worth more than two, and not more than five thousand dollars.....	1 25
For all estates worth more than five, and not over ten thousand dol- lars.....	1 40
For all estates worth more than ten thousand dollars...	1 60
For recording all vouchers accompanying returns of administrators, ex- ecutors, and guardians, per 100 words.....	12
For recording any instrument of writing not mentioned, per 100 words.	12
For proceedings to authorize titles to be made to lands of deceased per- sons.....	5 00
For commission to freeholders to divide estate.....	1 25
For each certificate and seal.....	60
For entering an appeal and transmitting the proceedings to the Supe- rior Court.....	1 50
For filing and recording an official bond.....	1 00
For services as treasurer of the school fund and secretary of the board of education not exceeding 5 per cent.....	

(a) Acts of 1865-6, pp. 40, 41.

Chapter 2.—Fees of Officers of Court.

For services in making settlement of accounts of any executor, administrator, or guardian, as prescribed in this Code.....	\$10 00
For each <i>fi. fa.</i> issued by him.....	60

§ 3644. The Clerks of the Superior Courts are entitled to the following fees, to wit:

Fees of
Clerks of Su-
perior Courts
in civil cases.

1. In civil cases—

For every suit settled by the parties in vacation.....	\$2 00
If settled at Court or non-suited, and the recording on minutes.....	3 00
For every writ where there is more than one defendant, after first copy.	60
For every suit commenced and prosecuted to judgment including service for recording petition, process and judgment.....	6 00
For every subpoena ticket.....	15
For writ of partition of land and recording proceedings.....	5 00
For recording proceedings in civil cases per hundred words.....	15
For every exemplification, per 100 words.....	10
For recording articles of partnership under the law regulating limited partnerships.....	5 00
For recording incorporation of joint stock and other incorporated companies.....	5 00
For recording incorporation of charitable or religious associations....	5 00
For proceedings to forfeit a charter.....	10 00
For recording proceedings in change of name.....	1 00
For furnishing and certifying any bill, process, order, etc., in equity, for publication.....	1 00
For recording notice of carpenters' and masons' liens.....	1 00
In trials of nuisance and recording proceedings	5 00
For rule <i>vs.</i> garnishee.....	1 00
For issuing commission to examine witness.....	1 00
For recording deeds.....	50
For every hundred words over 300 words thereof.....	15
For recording any instrument of writing not specified, per 100 words.	15
For every foreclosure of any mortgage of personalty including execution and recording proceedings.....	3 00
For every foreclosure of any mortgage of realty, including execution and recording proceedings.....	5 00
For every claim case.....	2 50
For every affidavit to hold bail	50
For recording and copying proceedings in chancery, and bills of exception and transcript to the Supreme Court, per 100 words.....	15
For recording remitter, order, and judgment of the Supreme Court on minutes.....	1 00
For issuing <i>fi. fa.</i> or <i>ca. sa.</i> , each.....	50
For certificate and seal, each.....	50
For <i>scire facias</i> to make parties, original.....	1 50
For copies of each.....	1 00
For recording order on minutes.....	75
For issuing jury scrip, each.....	10
For inspection of books where their aid is required.....	25
For examination of books and abstract of result.....	1 00

Chapter 2.—Fees of Officers of Court.

For each appeal if settled before verdict.....	\$1 25
For each appeal if prosecuted to verdict.....	2 50
For entering every motion on the minutes.....	1 00
Whenever services are required by the law, of any officer of the Court, and no fee for such service is prescribed, the Court shall tax in the bill of costs a reasonable charge therefor.	

2. In criminal cases—

Fees in
criminal
cases.

For all bills of indictment, if settled by the parties or <i>nol. pros'd</i> , including service for docketing and recording on the minutes and all other service.....	3 00
For every bill of indictment, when the defendant is arraigned, tried and found guilty, including all services.....	5 00
For transcribing record and evidence in State cases, per 100 words.....	15
For recording forfeiture of bond on minutes.....	1 00
For issuing <i>scire facias</i> after forfeiture, original.....	1 50
For each copy.....	1 00
For issuing subpoenas in State cases, each.....	15

[The Judges of the Superior Courts in any County where the matter is not regulated by local laws, may allow extra compensation to the Clerks of said Courts for issuing *venires*, furnishing stationery, etc., which allowance, by an order, shall be entered on the minutes of said Court; and upon presentation of a certified copy of the same to the County Treasurer, the said Treasurer is authorized and required to pay the same out of any money in the County Treasurer not otherwise appropriated.] (a)

Extra com-
pensation—
when al-
lowed.

§ 3645. The Clerks of the Inferior Courts are entitled to the following fees—to wit:

Fees of
Clerk of
the Inferior
Court.

For every estray horse, mule, or ass, for every legal service required....	\$2 00
For every bull, ox, or cow, for all service required.....	1 25
For every goat, hog, or sheep.....	30
For retailer's bond.....	1 00
For retailer's license.....	1 00
For copying and administering oath to retailer.....	50
For each peddler's license.....	1 25
For filing and recording each bond the law requires.....	1 00
For recording mark and brands.....	50
For comparing and testing weights and measures and stamping or marking each.....	10
For all the proceedings for making a Notary Public.....	5 00
For any service lawfully performed, that is also performable by the Clerks of the Superior Courts, the same fees as said Clerks.	

[The Justices of the Inferior Courts, in any County where the matter is not regulated by local laws, are authorized and required,

Extra com-
pensation.

Chapter 2.—Fees of Officers of Court.

when sitting at any session of said Courts, to allow the Clerks of said Courts such compensation as shall be reasonable and just for extra services in keeping the records of the Court for County purposes, and at regular sessions for making out *venires*, furnishing stationery, etc., which shall be placed on the minutes of said Court; and upon presentation of a certified copy of such order to the County Treasurer, he shall pay the same out of any money in his hands not otherwise appropriated.] (a)

§ 3646. The Sheriffs are entitled to the fees following—to-wit:

Fees of
Sheriff in
civil cases.

1. In civil cases—

For serving a copy of a process and returning original, per copy.....	\$2 00
If suit from another County [to be paid in advance] (b).....	2 00
For summoning each witness.....	50
For summoning jury and attending trial to assess damages for right of way.....	5 00
For service in every case before a special jury.....	1 25
For each levy on single <i>fi. fa.</i>	2 00
For each levy if more than one, on each levied.....	1 00
For search and return of <i>nulla bona</i>	1 00
For conducting a debtor under confinement before a Judge or Court...	1 00
For serving rule <i>vs.</i> garnishee.....	1 00
If more than one, for each additional copy.....	1 00
For summoning jury to try case of nuisance.....	3 00
For removing nuisances, such fees as the Court may deem reasonable.	
For summoning the juries to each term, to be paid by the County.....	5 00
All sums when the amount collected on execution by sale of property does not exceed fifty dollars and under, 5 per cent.	
For all sums above fifty dollars and not exceeding five hundred dollars, 2½ per cent.	
For all sums exceeding five hundred dollars, 1¼ per cent.	
No commissions shall be charged unless the property is actually sold.	
For making out and executing titles to land.....	3 50
If presented by the purchaser.....	1 00
For making out and signing bill of sale of property.....	1 25
Provided no fee shall be allowed but for one bill of sale, when it will be sufficient to convey the property to the purchasers, unless they should otherwise require.	
For taking bail bonds.....	1 00
For forthcoming bonds.....	1 00
In issues on application of insolvent debtors for service not in term time	5 00
For executing process, dispossessing tenant holding under plea of rent..	3 50
For settling execution, if property be levied on and money paid before sale.....	2 00
For keeping a horse, mare, mule, or ox, per day.....	25
For keeping each head of neat cattle per day.....	5
For keeping sheep, goats, or hogs, per day.....	4

(a) Acts of 1862-3, p. 24. (b) Acts of 1866, p. 24.

Chapter 2.—Fees of Officers of Court.

For following property, with attachment, out of the County, going and returning, per mile..... \$ 5

2. In criminal cases—

Fees in
criminal
cases.

For re-committing any prisoner when a <i>habeas corpus</i> is sought for his relief.....	1 25
For every mile a prisoner may be removed under <i>habeas corpus</i> ,.....	25
For removing a prisoner by <i>habeas corpus</i> , when no mileage is paid, per day.....	2 00
For attending a person taken by warrant to the Judge's chamber.....	1 00
For conducting a prisoner before a Judge, or Court, to and from jail...	1 25
For executing warrant of escape.....	1 00
For executing and returning a bench warrant.....	1 25
For apprehending a person suspected, if committed or held to bail....	1 25
For each person, not exceeding two, who may be employed to guard a prisoner to jail, per day.....	1 50
For executing a criminal	10 00
For whipping, cropping, or branding a criminal.....	5 00

[When a Sheriff, Deputy Sheriff, Coroner, or Constable of this State, shall arrest a fugitive from justice from another State, under warrant from the Executive of this State, such arresting officer shall be entitled to a fee of two dollars for said arrest, and twenty-five cents for every mile the prisoner may be removed under executive warrant; and said fees shall be paid by the officer or officers of the State, appointed to receive such fugitive from justice, before he is delivered or released by the arresting officer.] (a)

[The Judges of the Superior Courts, in any County where the matter is not regulated by local law, may allow Sheriffs extra compensation for summoning Grand and Petit Jurors, and for other extra services in attending upon the Court, as in their judgment shall be reasonable and just; and the Justices of the Inferior Courts are required to allow the Sheriffs such compensation as shall be reasonable and just for summoning juries and attending upon the Courts, which compensation shall be allowed and paid in the same manner as is provided in Sections 3644 and 3645 in relation to Clerks of the Superior and Inferior Courts.] (b)

§ 3647. Jailors are entitled to the following fees—to wit:

Fees of
Jailors.

For receiving prisoner or debtor.....	\$ 60
For turning the key or discharging the prisoner, by virtue of <i>habeas corpus</i> , by order of the Court, Judge, or Justice.....	60

[For dieting prisoners confined in jail on any ground whatever, such fees as may be fixed by the Justices of the Inferior Court of the County, who are hereby invested with the power to fix said fees.] (c)

Chapter 2.—Fees of Officers of Court.

For turning key, on commitment of a prisoner except as hereinafter provided..... \$ 60

County to Whenever Jail fees are chargeable to the County, the same shall be pay monthly paid monthly.

§ 3648. Justices of the Peace shall have the following fees—to wit:

Fees of Jus- 1. In civil cases—
tices of the
Peace in civ-
il cases.

For each case tried by said Justices.....	35
For each summons.....	35
For affidavit to obtain an attachment or to hold to bail, and taking the bond.....	75
For entering a judgment.....	35
For each execution, <i>ca. sa.</i> , or attachment.....	35
For drawing jury and making out list.....	30
For each cause tried by said jury.....	30
For affidavit to obtain a possessory warrant and making out the same..	75
For trying the same.....	60
For making out interrogatories and certifying the same.....	1 25
For making out recognizance and returning the same to Court.....	35
For each subpoena for witness.....	15
For each affidavit, when there is no cause pending.....	30
For every writ of <i>certiorari</i> to the Superior Court.....	60
For presiding at trial of forcible entry, or detainer, or both—each trial.	1 00
For presiding at each trial of right of way.....	1 00
For issuing rule to establish lost paper.....	35
For trying the same.....	35
For presiding at trial of nuisance.....	1 00
For witnessing any paper.....	25

Fees in criminal cases.

2. In criminal cases—	
[For each criminal warrant issued by them.....	1 25
For taking examination of a person charged with a criminal offense, (a)	1 25]
For examining each witness in criminal cases.....	30
For making out a commitment.....	35

Fees of Constables.

§ 3649. Constables' fees shall be as follows—to wit:	
For serving a warrant, summons, or attachment.....	35
For each additional copy of summons, warrant, or attachment.....	30
For summoning every witness.....	30
For each cause tried by a Justice or jury.....	30
For attending each trial in Justices' Court.....	35
For summoning a jury.....	75
For levying a <i>ca. sa.</i> or <i>fi. fa.</i> and advertising.....	35
For settling <i>fi. fa.</i> when the property is not sold.....	30
For return <i>nulla bona</i>	30
For summoning jury on inquest.....	1 00

(a) Acts of 1866, p. 68.

Chapter 2.—Fees of Officers of Court.

For collecting execution issued by Coroner.....	\$ 75
For keeping a horse, mule, ass, or ox, per day.....	25
For each head of neat cattle.....	5
For sheep, goats, or hogs, per day.....	4
On all sales made by him, 6¼ per centum on amounts sold.	
For attending a Grand Jury, per day.....	1 00
For attending Grand Jury, for each bill found, to be paid by delinquent,	30
For serving a warrant in criminal cases.....	1 25
For keeping and maintaining a prisoner before examination, not exceeding twenty-four hours.....	75
For serving rule to establish lost paper.....	35
For every additional copy.....	30
For following property with attachment out of County, going and returning, per mile.....	5
For whipping a person by judgment of a Court.....	1 00

§ 3650. Coroners' fees are as follows—to wit :

	Fees of Coroners.
For summoning an inquest on a dead body and returning an inquisition	10 00
For furnishing coffin and burial expenses.....	15 00
When performing the duties of a Sheriff, his fees are the same as a Sheriff.	

§ 3651. County Surveyors' fees are as follows—to wit :

	Fees of County Surveyors.
For surveying a town lot and returning a certificate thereof.....	1 25
For surveying a tract of land of or under 100 acres.....	3 50
For each hundred acres after the first.....	1 00
For making a plat, recording, advertising, and transmitting the same to the Secretary of State's office.....	1 25
For entering a <i>caveat</i> , advertising, and giving a certified copy thereof...	2 00
For attending trial of the same.....	1 00
For each postponement, to be paid by the postponing party.....	60
For recording judgment and giving certified copy thereof.....	60
For entering an appeal and giving certified copy thereof.....	1 25
For a re-survey of land by order of Court of or under 100 acres, for the first 100 acres.....	3 50
For every hundred acres after the first.....	1 00
For every other re-survey of the same.....	1 00
For making and certifying a plat thereof and transmitting the same....	1 25
Running line between Counties, districts, or making new lines, per day, he furnishing the chainbearer and provisions.....	8 00

§ 3652. County Treasurer's fees are as follows—to wit :

	Fees of County Treasurers.
Upon all amounts received and paid out by him, 2½ per cent.	
For making his returns to the Grand Jury.....	1 00
For making his returns to Justices of the Inferior Court.....	1 00

§ 3653. The fees of Notaries Public are as follows—to wit :

	Fees of Notaries Public.
For every protest, oath included.....	2 00
For noting a protest.....	1 00
For registering a protest, per copy sheet.....	10

Chapter 2.—Fees of Officers of Court.

For copy of a protest, per copy sheet.....	\$ 10
For administering an oath in any case.....	30
For each attendance on any person, to make proof as a Notary Public, and certifying the same.....	1 00
For every other certificate.....	50

The cost of registering is likewise a charge against the party noted and protested, and must be charged in the costs at the same time, and paid to the Notary by the party for whose benefit the noting and protesting was done. All other registering must be paid for by the party who has the service performed. The fees for all official acts which the Notary is allowed to perform are the same as those prescribed for any other officers who are likewise permitted to perform them.

Fees for other acts, the same as other officers.

Fees not to be charged to State.

§ 3654. None of the fees hereinbefore expressed shall be charged to the State for failure to collect out of the person charged, unless otherwise expressly declared, or in their nature must necessarily be so paid.

Statement of fees demanded to be given.

§ 3655. Every public officer and person herein mentioned, their deputy, or agent, shall, when required, give a statement of the fees demanded, and a receipt for the same, to any person paying any lawful or pretended fees of office, on pain of ten dollars for every such neglect or refusal, to be sued for within twelve months, and recovered by the person paying the fees and making the demand.

Forfeit for excessive charges.

§ 3656. If such officers or person shall take or demand any greater fee than the law allows, or fee for services not performed, he forfeits fifty dollars, to be sued for and recovered as prescribed in the preceding Section.

Table of fees to be kept in office.

§ 3657. Every public officer must constantly keep, in a conspicuous place in his office, or place where he usually executes the business thereof, a table of his fees, in fair words and figures, and, on failure to do so, he forfeits one dollar per day for every day he so neglects, to be recovered at the suit of any informer, to whom the whole recovery shall go.

Treble costs when.

§ 3658. When public officers are sued on account of the provisions of this Chapter, and there is a verdict in their favor, the persons suing shall pay three times the ordinary costs.

Penalty for improper charges.

§ 3659. Any public officer who shall charge or take fees not allowed by law, or for service not performed, shall, on conviction or proof thereof, be dismissed from office.

Article 1.—By whom and for what Causes Allowed.

TITLE VIII.

OF NEW TRIALS.

CHAPTER I.

OF NEW TRIALS.

ARTICLE 1.—*By whom and for what Causes Allowed.*ARTICLE 2.—*When, where, and how Tried.*

ARTICLE I.

BY WHOM, AND FOR WHAT CAUSES ALLOWED.

SECTION.

3660. What Court may grant new trials.
 3661. Sup'r Court may correct errors, etc.
 3662. Verdict contrary to evidence.
 3663. Evidence illegally admitted, etc.
 3664. Erroneous charge of the Court.
 3665. Newly discovered evidence.

SECTION.

3666. Verdict against evidence.
 3667. Judge may grant on other grounds.
 3668. Application—when made.
 3669. Another Judge may grant.
 3670. Motion after adjournment—notice.

§ 3660. New trials can be granted by the Superior Courts only; the Inferior Courts have no such power.

Superior
Court only
can grant.

§ 3661. The several Superior Courts of this State shall have power to correct errors, and grant new trials in any cause depending in any of the said Superior Courts, in such manner and under such rules and regulations as they may establish according to law and the usages and customs of Courts.

Superior
Court may
correct er-
rors, etc.

§ 3662. In any case when the verdict of a special jury is found contrary to evidence and the principles of justice and equity, the presiding Judge may grant a new trial before another special jury.

When ver-
dict is con-
trary to evi-
dence.

§ 3663. The Superior Courts may grant new trials in all cases when any material evidence may be illegally admitted to, or illegally withheld from the jury against the demand of the applicant.

When evi-
dence is il-
legally ad-
mitted or
excluded.

§ 3664. A new trial may be granted in all cases when the presiding Judge may deliver an erroneous charge to the jury against such applicant on a material point, or refuse to give a pertinent

For errone-
ous charge to
jury, etc.

Article 1.—By whom and for what Causes Allowed.

legal charge in the language requested, when the charge so requested is submitted in writing.

On account
of new evi-
dence.

§ 3665. A new trial may be granted in all cases when any material evidence, not merely cumulative in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the Court within the time now allowed by law for entering a motion for a new trial.

When the
verdict is
against evi-
dence.

§ 3666. The presiding Judge may exercise a sound discretion in granting or refusing new trials in cases where the verdict may be decidedly and strongly against the weight of evidence although there may appear to be some slight evidence in favor of the finding.

Judge may
grant on oth-
er grounds.

§ 3667. In all applications for a new trial on other grounds, not provided for in this Code, the presiding Judge must exercise a sound legal discretion in granting or refusing the same according to the provisions of the common law and practice of the Courts.

Application
to be made
during term.

§ 3668. All applications for a new trial, except in extraordinary cases, must be made during the term at which the trial was had, but may be heard, determined, and returned in vacation.

Another
Judge may
grant new
trial.

§ 3669. A Judge may decide a motion for a new trial who did not try the case either when he is presiding in the Court in which the motion is pending, or when he is named in the rule.

Motion
made after
adjournment
of Court.

§ 3670. In case of a motion for a new trial made after the adjournment of the Court, some good reason must be shown why the motion was not made during the term, which shall be judged of by the Court. In all such cases, twenty days' notice shall be given to the opposite party.

ARTICLE II.

WHEN, WHERE, AND HOW TRIED.

SECTION.

3671. Triable next term.

3672. By a special jury.

SECTION.

3673. Copy rule *ni si* to be served.

3674. Superseadeas by order.

Time of
new trial.

§ 3671. When a new trial has been granted by the Superior Court, the case shall stand upon the docket for trial at the next term as though no trial was had, and if said new trial is ordered by the Supreme Court, said case shall stand for trial at the next term of said Superior Court after the *remitter* is returned from

Article 2.—When, where, and how Tried.

the Supreme Court, and shall be subject to the rules for continuances provided in this Code.

§ 3672. All new trials shall be had by a special jury as provided in cases of appeals. By special jury.

§ 3673. In all applications for a new trial the opposite party shall be served with a copy of the rule *ni si*, unless such copy is waived. Rule *ni si* must be served.

§ 3674. A rule *ni si* for a new trial shall not operate as a supersedeas, unless so ordered by the Court: in which case the Court may demand bond and security for the eventual condemnation money, when the exigency of the case requires it. Not a supersedeas.

Motion to reinstate a case 2692 588

TITLE IX.

OF CLAIMS.

CHAPTER 1.—*Of Claims to Property in Execution.*

CHAPTER 2.—*At Other Judicial Sales.*

CHAPTER I.

OF CLAIMS TO PROPERTY IN EXECUTION.

ARTICLE 1.—*How and by whom Interposed.*

ARTICLE 2.—*When, where, and how Tried.*

ARTICLE I.

HOW AND BY WHOM INTERPOSED.

SECTION.

- 3675. Claims to be made on oath.
- 3676. Bond and security.
- 3677. Officer must postpone sale.
- 3678. Claimant give forthcoming bond.

SECTION.

- 3679. To whom bonds payable.
- 3680. Bonds recoverable—when, where.
- 3681. Partners, etc., claiming.
- 3682. Tax *fi. fa.* claim—where tried.

§ 3675. When any Sheriff or other officer shall levy an execu-

Article 1.—How and by whom Interposed.

Claim must
be made on
oath.

tion on property claimed by a third person, not a party to such execution, such person, his agent, or attorney, shall make oath to such property.

Bond and
security for
damages.

§ 3676. The person claiming such property, or his agent, or attorney, shall give bond to the Sheriff or other officer, as the case may be, with good and sufficient security, in a sum equal to double the amount of the property levied upon, at a reasonable valuation, to be judged by the levying officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property may assess against him in case it should appear that said claim was made for the purpose of delay only.

Sale must
be postponed
—when.

§ 3677. Affidavit and bond being made and delivered as required in the preceding Section, it shall be the duty of the Sheriff or other levying officer to postpone the sale of said property until otherwise ordered.

Forthcom-
ing bond
may be giv-
en, etc.

§ 3678. In all cases where a levy is made upon property that is claimed by a third person, and such person shall desire the possession thereof, it shall be the duty of the Sheriff or other levying officer to take bond with good security for a sum equal to double the value of the property levied on, to be estimated by the levying officer, for the delivery of such property at the time and place of sale, provided the property so levied upon shall be found subject to such execution.

Bonds made
payable — to
whom.

§ 3679. The claim bond shall be made payable to the plaintiff in execution, and the forthcoming bond shall be made payable to the Sheriff.

Bond re-
coverable on
failure.

§ 3680. Bond and security being given as provided in the previous Section, it shall be the duty of the Sheriff or other levying officer to leave such property in the possession of such claimant, and in case the said claimant or his security should fail to deliver said property, said bond shall be made recoverable in any Court having cognizance of the same.

Partner or
joint owner
may claim
for all.

§ 3681. One of several partners or persons jointly interested may make the affidavit and execute the bond in the name of the firm or persons jointly interested, who shall be bound thereby as though each individual had signed it himself.

Tax *à. fa.*
levied, etc.

§ 3682. When any execution may be issued against any Tax Collector or tax payer for taxes due the State, or any County thereof, and the Sheriff or other officer shall levy the same on property claimed by a person not a party to such execution, such

Article 2.—When, where, and how Tried.

claimant shall make oath as herein provided in the case of other claims, and give bond as provided in Section 898, and the same proceedings shall be had thereon as provided for the trial of the right of property, except that such trials shall be had in the County wherein the levy was made.

ARTICLE II.

WHEN, WHERE, AND HOW TRIED.

SECTION.

3683. To what Court claim is returnable.
 3684. Tried by Petit Jury.
 3685. Damages, if for delay only.
 3686. Burden of proof.

SECTION.

3687. Withdrawal of claim.
 3688. Assessment of damages.
 3689. Either party may appeal.

§ 3683. When an execution issued from the Superior Court shall be levied upon personal property, and claimed by a person not a party to such execution, as provided in this Code, it shall be the duty of the levying officer to return the same, together with the execution, to the next term of the Court from which said execution issued; but should such execution be levied upon real property, and the same shall be claimed in the manner aforesaid, it shall be the duty of the officer making the levy to return the same, together with the execution and claim, to the next term of the Superior Court of the County in which the land so levied upon shall lie.

Where
claim to be
returned.

*Rule 11
Ch. 10
Ind. 11
5 Min.*

§ 3684. The Court to which a claim shall be returned shall cause the right of property to be decided on by a Petit Jury at the first term thereof, unless continued as other cases at common law.

Tried by
Petit Jury.

§ 3685. Every juror on the trial of the claim of property, either real or personal, except jurors in Justices' Court, shall be sworn, in addition to the oath usually administered, to give such damages, not less than ten per cent., as may seem reasonable and just, to the plaintiff against the claimant, in case it shall be sufficiently shown that such claim was made for delay only, and such jury may give a verdict in the manner aforesaid, by virtue whereof, judgment may be entered up against the claimant and his security for the damages so assessed by the jury and the costs of the trial of the right of property.

Damages
for
delay
only.

Security
liable.

8-12-18

§ 3686. Upon the trial of all claims provided for in this Chapter, the burden of proof shall lie upon the plaintiff in execution in

Burden of
proof
on
plaintiff.

Article 2.—When, where, and how Tried.

all cases where the property levied on is, at the time of such levy, not in possession of the defendant in execution.

§ 3687. Whenever a claim of property is made in terms of this Code, and returned to the proper Court by the Sheriff, or other levying officer, the claimant shall not be permitted to withdraw or discontinue his said claim more than once, without the consent of the plaintiff in execution, or some person duly authorized to represent such plaintiff; but such Court shall proceed to the trial of the claim of such property, and it shall be the duty of the jury to assess damages accordingly.

§ 3688. Upon the trial of claims to property which may be pending in the Superior Court, when damages shall be found by the jury, the said damages shall be assessed upon the whole amount then due upon the execution, provided the value of the property in dispute exceeds the amount of said execution, and upon the value of the property, when the value of the property is less than the execution levied.

§ 3689. Either party in claim cases may appeal as in cases at common law.

CHAPTER II.

OF CLAIMS AT OTHER SALES.

SECTION.

3690. Land—how claimed at ex'r's sale.
3691. Where tried.

SECTION.

3692. Personalty—claim of.
3693. Claim postpones sale.

§ 3690. When an executor, administrator, guardian, or other trustee, shall advertise that it is his intention to apply for leave to sell any real estate, as the property of his testator, intestate, ward, or *cestui que trust*, or having obtained such order, it may be lawful for any person claiming such real estate, either by himself, his agent, or attorney, to file in the Court of Ordinary an affidavit claiming said property, a copy whereof shall be served on such executor, administrator, guardian, or trustee, as the case may be, previous to the day of sale.

§ 3691. Affidavit having been made and filed, and notice having been given as required in the preceding Section, it shall be the duty of the Ordinary to transmit such claim affidavit to the next term of the Superior Court of the County where the land lies, and the right of property shall be there tried, upon an issue made

Chapter 2.—Claims at other Sales.

up in the same manner and under the same regulations, restrictions, and penalties as are provided for the trial of claims to property levied on by execution.

§ 3692. When any executor, administrator, guardian, or other trustee, shall advertise to sell any personal property as the property of his testator, intestate, ward, or *cestui que trust*, and the same shall be claimed on oath, and the claim affidavit shall have been filed and served, as required in the first Section of this Chapter, it shall be the duty of the Ordinary to transmit such claim affidavit to the Superior Court next to be held after such claim is filed in the County where such executor, administrator, guardian, or trustee resides.

Claim to
personalty—
where tried.

§ 3693. When a claim has been interposed, as provided in the preceding Sections, the sale of the property advertised and claimed shall be postponed until after the termination of the claim case.

Claim post-
pones sale.

TITLE X.

OF EVIDENCE.

CHAPTER 1.—*General Principles.*

CHAPTER 2.—*Of the Rules Governing the Admission of Testimony.*

CHAPTER 3.—*Of Discovery from the Parties.*

CHAPTER 4.—*Of Records and other Written Evidence.*

CHAPTER 5.—*Of Oral Testimony.*

CHAPTER 6.—*Of Interrogatories and Depositions.*

CHAPTER 7.—*Of Perpetuating Testimony.*

CHAPTER I.

GENERAL PRINCIPLES.

SECTION.

- 3694. Object of evidence.
- 3695. Sundry definitions.
- 3696. Mental conviction.
- 3697. Same rules in all Courts and cases.
- 3698. Matters judicially recognized.

SECTION.

- 3699. Presumptions of law and fact.
- 3700. Estoppels.
- 3701. *Prima facie* presumptions.
- 3702. Number of witnesses necessary.

Chapter 1.—General Principles.

§ 3694. The object of all legal investigation is the discovery of truth. The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

§ 3695. *Competent* evidence is that which is admissible. *Sufficient* evidence is that which is satisfactory for the purpose. *Cumulative* evidence is that which is additional to other already obtained. *Direct* evidence is that which immediately points to the question at issue. *Indirect*, or *circumstantial* evidence is that which only tends to establish the issue by proof of various facts, sustaining by their consistency, the hypothesis claimed. *Presumptive* evidence consists of inferences drawn by human experience from the connection of cause and effect, and observations of human conduct.

§ 3696. Moral and reasonable certainty is all that can be expected in legal investigation. In all civil cases the preponderance of testimony is considered sufficient to produce mental conviction. In criminal cases a greater strength of mental conviction is held necessary to justify a verdict of guilty.

§ 3697. Generally, the rules of evidence are the same in all the Courts of this State, and upon every trial the exceptions exist only by express statute.

§ 3698. The existence and territorial extent of States, their form of government, and symbols of nationality, the laws of nations, and general customs of merchants, the admiralty and maritime courts of the world and their seals, the political constitution and history of our own Government, as well as the local divisions of our own State, the seals of the several departments of the Government of the United States, and of the several States of the Union, and all similar matters of public knowledge are judicially recognized without the introduction of proof.

§ 3699. Presumptions are either of law or of fact. The former are conclusions and inferences which the law draws from given facts. The latter are exclusively questions for the jury, to be decided by the ordinary test of human experience.

§ 3700. Presumptions of law are sometimes conclusive, and an averment to the contrary will not be allowed. These are termed estoppels, and are not generally favored. Among these are the presumptions in favor of a record or judgment unreversed, of the proper conduct of Courts and judicial officers acting within their

Object of evidence.

Sundry definitions.

Amount of mental conviction.

Same rules in all Courts and cases.

Matters judicially recognized.

Presumptions of law and fact.

4/11/10

Positive Ev. outweighs Negative Evidence 21 Pa 133
 Relative value of Circumstantial and Positive
 29 Pa 287

Chapter 1.—General Principles.

legitimate sphere. Of other officers of the law after lapse of time has rendered it dangerous to open the investigation of their acts in regard to mere formalities of the law. Of ancient deeds, and other instruments more than thirty years old, when they come from the proper custody, and possession has been held in accordance with them. Recitals in deeds, except payment of purchase money, as against the grantor acting in his own right, and *sui juris* and his privies in estate, blood and in law. The landlord's title, as against his tenant, while tenant in possession. Solemn admissions made *in judicio*, and other admissions, upon which other parties have acted, either to their own injury or the benefit of the persons making the admissions, and similar cases where it would be more unjust and productive of more evil to hear the truth than to forbear the investigation.

§ 3701. Other presumptions of law, such as of innocence, and in some cases of guilt, of continuance of life for seven years of a mental state once proved to exist, and all similar presumptions may be rebutted by proof. *Prima facie* presumptions.

§ 3702. The testimony of a single witness is generally sufficient to establish a fact. Exceptions to this rule are made in specified cases; such as to convict of treason or perjury, in any case of felony where the only witness is an accomplice, and to rebut a responsive statement in an answer in equity—in these cases (except in treason) corroborating circumstances may dispense with another witness. Number of witnesses necessary.

CHAPTER II.

OF RULES GOVERNING THE ADMISSION OF TESTIMONY.

ARTICLE 1.—*General Rules.*

ARTICLE 2.—*Of Hearsay.*

ARTICLE 3.—*Of Admissions and Confessions.*

ARTICLE 4.—*Of Parol Evidence to Effect Written.*

Article 1.—General Rules.

ARTICLE I.

GENERAL RULES.

SECTION.

3703. Must be relevant.
 3704. Character and conduct of parties.
 3705. Burden of proof.
 3706. Changing *onus*.
 3707. Best evidence.
 3708. Primary and secondary evidence.
 3709. Written evidence.

SECTION.

3710. Copies of wills and records.
 3711. Officers *de facto*.
 3712. Inscriptions on monuments, etc.
 3713. Other exceptions.
 3714. Secondary evidence.
 3715. Degrees therein.
 3716. Existence of original.

Must be relevant. § 3703. The evidence must relate to the questions being tried by the jury, and bear upon them either directly or indirectly. Irrelevant matter should be excluded.

Character and conduct of parties. § 3704. The general character of the parties, and especially their conduct in other transactions, are irrelevant matter, unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct.

Burden of proof. § 3705. The burden of proof generally lies upon the party asserting or affirming a fact, and to the existence of whose case or defense the proof of such fact is essential. If a negation or negative affirmation be so essential, the proof of such negative lies on the party so affirming it.

Changing *onus*. § 3706. What amount of evidence will change the *onus* or burden of proof, is a question to be decided in each case by the sound discretion of the Court.

Best evidence. § 3707. The best evidence which exists of the fact sought to be proved must be produced, unless its absence is satisfactorily accounted for.

Primary and secondary evidence. § 3708. *Primary* evidence is such as in itself does not indicate the existence of other and better proof. *Secondary* evidence is such as from necessity in some cases is substituted for stronger and better proof.

Written evidence. § 3709. Written evidence is considered of higher proof than oral, and in all cases where the parties have reduced their contract, agreement, or stipulation to writing, and assented thereto, it is the best evidence of the same.

Wills and records. § 3710. Copies of records of judicial proceedings, and wills admitted to probate, are admitted as primary evidence, when properly authenticated. In all other cases a copy is secondary evidence.

Handwritten note: When testimony is admitted, must be recorded by the jury. 25 Feb 1871

Article 1.—General Rules.

§ 3711. An officer *de facto* may be proved by his acts, without the production of his commission or appointment. Officer *de facto*.

§ 3712. Inscriptions on walls, monuments, and other fixed objects, may be proved by copies established as such. Inscriptions on monuments, etc.

§ 3713. Other cases of necessity, or manifest convenience, resting on like principles of reason and justice, may be made exceptions to the general rule. Other exceptions.

§ 3714. In order to admit secondary evidence, it must appear that the primary evidence, for some sufficient cause, is not accessible to the diligence of the party. This showing is made to the Court, who will hear the party himself, on the question of diligence, and the inaccessibility of the *primary* evidence. Secondary evidence—when admitted.

§ 3715. There are degrees in secondary evidence, and the best should always be produced. Thus, a duplicate is better than a copy, and an examined copy than oral evidence. Degrees therein.

§ 3716. The existence of a genuine original, is essential to the admissibility of a copy. The amount of evidence to show such existence, must vary with the circumstances of each case. Where no direct issue is made upon this fact, slight evidence would be sufficient. Original existence of.

ARTICLE II.

OF HEARSAY.

SECTION.

- 3717. Hearsay evidence.
- 3718. Sometimes original evidence.
- 3719. Pedigree.
- 3720. *Res gestæ*.
- 3721. Declarations of persons in possess'n.
- 3722. Declarations of conspirators.
- 3723. Of deceased persons.

SECTION.

- 3724. Books of account.
- 3725. Matters of public interest.
- 3726. Ancient documents.
- 3727. Ancient boundaries and landmarks.
- 3728. Dying declarations.
- 3729. Testimony of witnesses.

§ 3717. Hearsay evidence is that which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in specified cases from necessity. Hearsay evidence.

§ 3718. When, in a legal investigation, information, conversations, letters, and replies, and similar evidence, are facts to explain conduct and ascertain motives, they are admitted in evidence not as hearsay, but as original evidence. Sometimes original evidence.

Article 2.—Hearsay.

§ 3719. Pedigree, including descent, relationship, birth, marriage, and death, may be proved either by the declarations of deceased persons related by blood or marriage, or by general repute in the family, or by genealogies, inscriptions, "family trees," and similar evidence.

§ 3720. Declarations accompanying an act, or so nearly connected therewith in time as to be free from all suspicion of device or after-thought, are admissible in evidence as part of *res gestæ*.

§ 3721. Declarations of a person in possession of property in disparagement of his own title are admissible in evidence in favor of any one, and against privies. Declarations in favor of his own title are admissible to prove his adverse possession.

§ 3722. After the fact of conspiracy is proved, the declarations of any one of the conspirators during the pendency of the criminal project, are admissible against all.

§ 3723. The declarations and entries of a person, since deceased, against his interest, and not made with a view to pending litigation, are admissible in evidence in any case.

§ 3724. The books of account of any merchant, shop-keeper, physician, blacksmith, or other person doing a regular business and keeping daily entries thereof, may be admitted in evidence, as proof of such accounts, upon the following conditions :

1. That he kept no clerk, or else the clerk is dead, or otherwise inaccessible.
2. Upon proof (the party's oath being sufficient) that the book tendered is his book of original entries.
3. Upon proof (by his customers) that he usually kept correct books.
4. Upon inspection by the Court, to see if the books are free from any suspicion of fraud.

§ 3725. Hearsay evidence as to declarations of deceased persons as to ancient rights, and made before the litigation arose, are admissible to prove matters of public interest in which the whole community are supposed to take interest and to have knowledge.

§ 3726. Ancient documents, purporting to be a part of the transaction to which they relate, are admissible in evidence.

§ 3727. Traditionary evidence, as to ancient boundaries and landmarks, is admissible in evidence—the weight to be determined by the jury, according to the source whence it comes.

Article 3.—Admissions and Confessions.

§ 3728. Dying declarations, made by any person in the article of death, who is conscious of his condition, as to the cause of his death and the person who killed him, are admissible in evidence in a prosecution for the homicide. Dying declarations.

§ 3729. The testimony of a witness, since deceased, or disqualified, or inaccessible for any cause, given under oath on a former trial, upon substantially the same issue and between substantially the same parties, may be proved by any one who heard it and who professes to remember the substance of the entire testimony, as to the particular matter about which he testifies. Testimony of witness on former trial.

ARTICLE III.

OF ADMISSIONS AND CONFESSIONS.

SECTION.

- 3730. Definition.
- 3731. Parties to record.
- 3732. Real parties in interest.
- 3733. Of strangers.
- 3734. Of agents.
- 3735. Of privies.
- 3736. Admissions improperly obtained.
- 3737. Effect of silence.
- 3738. Entire conversation.

SECTION.

- 3739. Weight of such evidence.
- 3740. Confessions must be voluntary.
- 3741. Under promise of secrecy, etc.
- 3742. Material facts discovered.
- 3743. Confession of conspirators.
- 3744. Confidential communications.
- 3745. Attorney and client.
- 3746. When Grand Jury may disclose.

§ 3730. Admissions usually refer to civil cases; confessions to criminal. Definitions.

§ 3731. The admission of a party to the record is admissible in evidence when offered by the other side, except in the following cases: Parties to record.

1. In case of a mere nominal party or naked trustee.
2. Where there are several parties with no joint interest, the admissions of one can not be received, unless the issue is of such a character that the effect of the admission can be restrained to him alone.
3. The admissions of any trustee before he is clothed with the trust.
4. Defendants in *fi. fa.* in claim cases after the pendency of litigation.

§ 3732. The admission of the real party in interest is admissible, though he be not of record, subject to the exceptions stated above. Real parties in interest.

Article 3.—Admissions and Confessions.

§ 3733. The admissions of third persons, strangers to the suit,
Of strangers. are received in evidence—

1. When the party refers to such third person for information.
2. Admissions made by a third person against his interest as to a fact collateral to the main issue between the litigants, but essential to the adjudication of the cause.
3. Statements of an interpreter where from any cause he can not be sworn.

§ 3734. The admissions of an agent or attorney in fact, during
Of agents. the existence and in pursuance of his power, are evidence against the principal.

§ 3735. The admissions of privies in blood, privies in estate,
Of privies. and privies in law are admissible as against the parties themselves, but declarations of privies in estate, after the title has passed out of them, can not be received.

§ 3736. Admission obtained by constraint, or by fraud, or by
Admissions drunkenness induced for the purpose, or admissions or proposi-
improperly obtained. tions made with a view to a compromise, are not proper evidence.

§ 3737. Acquiescence, or silence when the circumstances re-
Effect of quire an answer or denial, or other conduct, may amount to an ad-
silence. mission.

§ 3738. When an admission is given in evidence it is the right
Entire con- of the other party to have the whole admission and all the conver-
versation. sation connected therewith.

§ 3739. All admissions should be scanned with care, and con-
Weight of fessions of guilt should be received with great caution. A con-
such evi- fession alone, uncorroborated by other evidence, will not justify a
dence. conviction. *Contra 11 Ga 225.*

§ 3740. To make a confession admissible, it must have been
Confession made voluntarily, without being induced by another, by the slight-
must be vol- est hope of benefit or remotest fear of injury.

§ 3741. The fact that a confession is made under a spiritual ex-
Under pro- hortation, or a promise of secrecy, or a promise of collateral ben-
mise of se- fit, shall not exclude it.

§ 3742. Any material facts discovered by a confession by a
Material prisoner may be proved, and the fact of its discovery, by reason
facts discov- of such information, though the confession is rejected.

§ 3743. The confession of one joint offender or conspirator,
Confession made after the enterprise is ended, is admissible only against him-
of conspira- self. *22 Ga 99.*

*Explanations and declarations in an
other language and in the same
admissible than spoken language
22 Ga 285*

Article 3.—Admissions and Confessions.

§ 3744. There are certain admissions and communications excluded, from public policy. Among these are— Confidential communications, etc.

1. Communications between husband and wife.*
2. Between attorney or counsel and client.* *214a 301*
3. Among Grand Jurors.
4. Secrets of State.

§ 3745. Communications to any attorney, or his clerk, to be transmitted to the attorney pending his employment, or in anticipation thereof, should never be heard by the Court. So the attorney can not be compelled to disclose the advice or counsel he may give to his client, nor to produce or deliver up title deeds, or other papers, except evidences of debt left in his possession by his client. This rule does not exclude the attorney as a witness to any facts which may transpire in connection with his employment.† Attorney and client.

§ 3746. Grand Jurors shall disclose every thing which occurs in their service whenever it becomes necessary, in any Court of Record in this State. When Grand Jurors may disclose.

ARTICLE IV.

OF PAROL EVIDENCE TO AFFECT WRITTEN.

SECTION.

3747. General rule.
 3748. Contemporaneous writings.
 3749. Void instruments.
 3750. Where part only is in writing.
 3751. Surrounding circumstances.

SECTION.

3752. Usage.
 3753. Other cases.
 3754. Receipts.
 3755. Blank indorsements.
 3756. Reducing deed to mortgage.

§ 3747. Parol contemporaneous evidence is inadmissible generally to contradict or vary the terms of a valid written instrument. General rule.

§ 3748. All contemporaneous writings are admissible to explain each other, and parol evidence is admissible to explain all ambiguities, both latent and patent. Contemporaneous writings.

§ 3749. Parol evidence is admissible to show that the writing was either originally void or has subsequently become so. Void instruments.

§ 3750. If the writing does not purport to contain all the stipulations of the contract, parol evidence is admissible to prove Where part only is in writing.

* As to the competency of witnesses, and how far they are *compelled* to testify, see Sections 3798 and 3799.

† As to the competency of witnesses, and the extent of their obligation to testify, see Sections 3798 and 3799.

Article 4.—Parol Evidence to Affect Written.

other portions thereof not inconsistent with the writing; so collateral undertakings between parties of the same part among themselves would not properly be looked for in the writing.

Surround-
ing circum-
stances. § 3751. The surrounding circumstances are always proper subjects of proof to aid in the construction of contracts.

Usage. § 3752. In like manner evidence of known and established usage is admissible for the same purpose as well as to annex incidents.

Other cases. § 3753. Parol evidence is also admissible to rebut an equity, to discharge the entire contract, to prove a new and distinct subsequent agreement, to enlarge the time or change the place of performance.

2456 Receipts. § 3754. Receipts for money are always only *prima facie* evidence of payment and may be denied or explained by parol.

Blank in-
dorsements. § 3755. Blank indorsements of negotiable paper may always be explained between the parties themselves, or those taking with notice of dishonor or of the actual facts of such indorsements.

Reducing
deed to
mortgage. § 3756. A deed or bill of sale, absolute on its face and accompanied with possession of the property, shall not be proved (at the instance of the parties) by parol evidence to be a mortgage only, unless fraud in its procurement is the issue to be tried.

CHAPTER III.

OF DISCOVERY FROM THE PARTIES.

SECTION.

3757. Discovery at law.

3758. Just as other witnesses.

3759. Privilege of oral examination.

SECTION.

3760. Failing to answer, or evading.

3761. Privileged matters.

Discovery
at law. § 3757. Discovery may be had from the opposite party, either nominal or real, in any case pending in any Court in this State.

Just as oth-
er witnesses. § 3758. The party seeking the discovery may either subpoena the other party as a witness, or else file interrogatories, and sue out a commission, as in cases provided for other witnesses. In the latter event the right of cross examination exists as in other cases.

Privilege of
oral exami-
nation. § 3759. When interrogatories are filed in office, and notice given thereof, it shall be the duty of the party sought to be examined, to see to the execution and return of the same before the return term thereof.

Case 5th 132-15. 3rd 517-518.
Definition 11 Gra 622

Article 1.—Records and Public Documents.

§ 3760. A party failing to appear, without sufficient excuse, when properly subpoenaed, or failing or refusing to answer, either orally or to the interrogatories filed, or answering evasively, shall be subject to attachment for contempt, and the Court may also dismiss his case, if he be plaintiff, or strike out his pleas, if he be defendant, or give such other direction to the cause as is consistent with justice and equity.

Failing to
answer or
answering
evasively.

§ 3761. No party shall be required to testify as to any matter which may criminate or tend to criminate himself, or which shall tend to work a forfeiture of his estate, or which shall tend to bring infamy, or disgrace, or public contempt upon himself, or any member of his family.*

Privileged
matters.

CHAPTER IV.

OF RECORDS AND OTHER WRITTEN EVIDENCE.

ARTICLE 1.—*Of Records and Public Documents.*ARTICLE 2.—*Of Private Writings.*

ARTICLE I.

OF RECORDS AND PUBLIC DOCUMENTS.

SECTION.

- 3762. Laws and resolutions.
- 3763. Exemplifications.
- 3764. When primary evidence.
- 3765. Records lost or destroyed.
- 3766. Proof of registry.
- 3767. Certified copy.
- 3768. If registry is destroyed.
- 3769. Presumption of proper probate.

SECTION.

- 3770. Former acts continued in force.
- 3771. Laws of U. S. and several States.
- 3772. Foreign laws.
- 3773. Effect of judgments as evidence.
- 3774. Judgment *in rem*.
- 3775. Not evidence for witness.
- 3776. How attacked.
- 3777. Notarial acts.

§ 3762. All laws and resolutions of the General Assembly as published by authority, shall be held, deemed, and considered public laws, and recognized judicially without proof. The Journals of each branch of the General Assembly, as published, shall be in like manner recognized without proof.

Laws and
resolutions.

* As to how far a witness is competent and *compellable* to testify, see Sections 3798 and 3799.

Article 1.—Records and Public Documents.

Exemplifications. § 3763. The certificate, or attestation of any public officer, either of this State, or any County thereof, shall give sufficient validity or authenticity to any copy or transcript of any record, document, paper of file, or other matter or thing in their respective offices, or pertaining thereto, to admit the same in evidence in any Court of this State.

When primary evidence. § 3764. Such exemplifications shall be primary evidence as to all records, or other things required by law to remain in such offices, but only secondary evidence as to such documents as by law properly remain in the possession of the party.

Records lost or destroyed. § 3765. When a record has been burned, or otherwise destroyed, its contents may be proved by any secondary evidence which does not disclose the existence of other and better evidence.

Proof of registry. § 3766. The official entry of the proper officer on a paper shall be sufficient evidence of its registry.

Certified copy. § 3767. If the original of any paper, properly registered, is lost or destroyed, a certified copy from the registry shall be deemed good secondary evidence.

If registry is destroyed. § 3768. If the registry has also been destroyed before a copy has been made and certified, any secondary evidence is admissible to prove the original and its registry, which does not disclose the existence of other and better evidence.

Presumption of proper probate. § 3769. If the original is found to have been recorded, and it does not appear whether it was done on proper probate, the Court shall presume, until the contrary appears, that the same was done on proper probate.

Former acts continued in force. § 3770. All the acts heretofore passed allowing papers improperly registered, and their copies, when lost, to be admitted in evidence shall be continued in force.

Laws of U. S. and several States. § 3771. The public laws of the United States, and of the several States thereof, as published by authority, shall be judicially recognized without proof.

Foreign laws. § 3772. Foreign laws and judgments must be authenticated under the great seal of their respective States.

Effect of judgments as evidence. § 3773. A judgment is admissible between any parties to show the fact of the rendition thereof: between parties and privies it is conclusive as to the matter directly in issue, until reversed or set aside.

Judgments in rem. § 3774. A judgment *in rem* is conclusive upon every body.

§ 3775. A judgment is inadmissible for any purpose in favor of

Article 1.—Records and Public Documents.

a party upon whose testimony, in whole or in part, it was rendered, except judgment from Justices' Court.*

Not evidence for witness.

§ 3776. A judgment that is void may be attacked in any Court, and by any body. In all other cases judgments can not be impeached collaterally, but must be set aside by the Court rendering them.

How attacked.

§ 3777. All notarial acts of Notaries Public in relation to bills of exchange, drafts, and promissory notes, required to be done by the laws of this State, may be proved by the certificate of such Notary under his hand and seal; *provided*, such certificate is filed in the Court at its first term, and permitted there to remain until the trial.

Notarial acts.

The following acts of Congress, being frequently needed for reference, are here inserted :

ACT OF CONGRESS OF MAY 26, 1790. 1 GRAY ; DIGEST 272.

The acts of the Legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the Courts of any State shall be proved, or admitted, in any other Court within the United States, by the attestation of the Clerk, and the seal of the Court annexed, if there be a seal, together with the certificate of the Judge, Chief Justice, or Presiding Magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every Court within the United States, as they have by law or usage in the Courts of the State from whence the said records are or shall be taken.

ACT OF CONGRESS OF MARCH 27, 1804. SEC. 2, GRAY ; DIGEST 180.

“From and after the passage of this act, all records and exemptions of office books, which are or may be kept in any public office of any State, not appertaining to a Court, shall be proved or admitted in any other Court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereunto annexed, if there be a seal, together with a certificate of the Presiding Justice of the Court of the County or District, as the case may be, in which such office is or

* Is not this Section repealed by Sections 3798 and 3799, making *parties* competent and compellable to testify?

Article 2.—Private Writings.

may be kept; or of the Governor, the Secretary of State, the Chancellor or the Keeper of the Great Seal of the State, that the said attestation is in due form, and by the proper officer: and the said certificate, if given by the Presiding Justice of a Court, shall be further authenticated by the Clerk or prothonotary of the said Court, who shall certify under his hand and the seal of his office that the said Presiding Justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the Chancellor, or Keeper of the Great Seal, it shall be under the great seal of the State in which the certificate is made. And the same records and exemplifications, authenticated as afore-said, shall have such faith and credit given to them in every Court and office within the United States as they have by law or usage in the Courts or offices of the State from whence the same are or shall be taken."

ARTICLE II.

OF PRIVATE WRITINGS.

SECTION.

- 3778. Production of proof.
- 3779. In case of loss.
- 3780. Production in Court.
- 3781. When notice unnecessary.
- 3782. Explaining alteration.

SECTION.

- 3783. Producing dispenses with proof.
- 3784. Subscribing witness.
- 3785. Other proof.
- 3786. Handwriting.
- 3787. Comparison of hands.

Production
of proof.

§ 3778. Generally the original writing must be produced, and its execution proved. The excepted cases are prescribed by law.

In case
of loss.

§ 3779. If the paper is lost or destroyed, proof of the fact to the Court will admit secondary evidence. The party is a competent witness to this point. The question of diligence is one of sound discretion in the Court.

Production
in Court.

§ 3780. The production of such private writing is provided for in another part of this Code.

When notice
unnecessary

§ 3781. Notice to produce is not necessary when the action is brought to recover the paper or to set it aside.

Explaining
alteration.

§ 3782. If the paper appears to have been materially altered, unless it is the cause of action, and no plea of *non est factum* is filed, the party offering it in evidence must explain the alteration unless the paper comes from the custody of the opposite party.

Article 2.—Private Writings.

§ 3783. The production of the paper by the opposite party (if ^{Producing dispenses with proof.} he claims any benefit under it) dispenses with the necessity of proof, and the notice to produce dispenses with proof as against the party giving the notice.

§ 3784. The subscribing witness must be produced in all cases, ^{Subscribing witness.} except the following: 1st. Ancient writings which prove themselves. 2d. If from any cause the witness can not be produced or sworn. 3d. Office bonds required by law to be approved or tested by a particular functionary. 4th. If the paper is only incidentally or collaterally material to the case. 329a
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§ 3785. If the witness is not produced, or, being produced, can ^{Other proof.} not recollect the transaction, the Court may hear any other evidence to prove its execution.

§ 3786. Proof of handwriting may be resorted to in the absence ^{Handwriting.} of direct evidence of execution. In such case, any witness is competent to testify as to his belief, who will swear that he knows or would recognize the handwriting. The source of his knowledge is a question for investigation, and goes entirely to the credit and weight of his evidence. 17 Ga 150

§ 3787. Other writings, proved or acknowledged to be genuine, ^{Comparison of hands.} may be admitted in evidence for the purpose of comparison by the jury. Such other new papers, when intended to be introduced, shall be submitted to the opposite party before he announces himself ready for trial.

CHAPTER V.

OF ORAL TESTIMONY.

ARTICLE 1.—*Of Witnesses—their Attendance and Fees.*

ARTICLE 2.—*Of their Competency.*

ARTICLE 3.—*Of their Examination.*

Article 1.—Witnesses—their Attendance and Fees.

ARTICLE I.

OF WITNESSES—THEIR ATTENDANCE AND FEES.

SECTION.

3788. Subpoenas.
3789. Payment of fees.
3790. Excessive claim.
3791. Failure to attend.

SECTION.

3792. State's witnesses from other Co's.
3793. Witnesses in prison.
3794. Freedom from arrest.
3795. No fees in certain cases.

Subpoena.

§ 3788. When the attendance of any person resident in the County is required as a witness in any Court, the Clerk of such Court (or if there be no Clerk, the presiding Judge or Justice) shall, on application, issue a writ of subpoena, directed to such person, requiring him to appear and testify in the case stated, and at the time stated. Such subpoena shall be served on the witness personally, by any person capable of proving the same, at least five days before the term of the Court. The witness so summoned shall attend the Court from term to term until the case is tried. And if there be an appeal or new trial, notice of the fact, without a new subpoena, shall be sufficient to require the attendance of the witness. The witness fee shall be seventy-five cents per diem.

Payment of fees.

§ 3789. The payment of the fees of a witness shall not be demanded as a condition precedent to an attendance. But at the close of each term, or any term, the witness may make affidavit before any Justice of the Peace, or Clerk of the Court, of the number of days he has attended on such subpoena for which his fees are due, which affidavit, when countersigned by the Clerk (or if no Clerk, the Judge,) and attached to the subpoena, shall have the force and effect of an execution against the property of the party at whose instance he was subpoenaed (unless in behalf of the State).

Mode of collection.

§ 3790. A witness who shall claim more than is due to him forfeits all his fees, and shall pay to the injured party, in addition thereto, four times the amount so unjustly claimed.

Excessive claim.

Failure to attend.

§ 3791. The Court may proceed by attachment to compel the attendance of a witness who fails to obey the precept, and also to punish him by a fine not exceeding three hundred dollars. In addition thereto such a witness shall be liable in damages to the person causing him to be subpoenaed for his failure to attend.

§ 3792. Witnesses for the State in a criminal prosecution in the Superior Courts, attending in a different County from that of their

Article 1.—Witnesses—their Attendance and Fees.

residence, shall receive each, two dollars per day during their attendance, and two dollars for each thirty miles traveled in going and returning, which shall be paid on the subpoena, verified as in ordinary cases, by the County Treasurer, out of the County funds. In case of conviction, the amount paid by the County shall be taxed in the bill of costs.

State's witnesses from other Counties.

§ 3793. The writ of *habeas corpus ad testificandum* may be issued by the Superior Court to cause the production in Court of any witness under legal imprisonment.

Witnesses in imprisonment.

§ 3794. Witnesses are protected from arrest on any civil process while going to or returning from, and attending on any Court, and the officer who shall hold him imprisoned after seeing his subpoena, or being satisfied of the fact, shall be liable for a false imprisonment.

Freedom from arrest.

§ 3795. A witness shall not receive any fees whatever for attendance on a subpoena if the cause at any time is continued for his absence, or if he is absent at the trial; *provided*, such absence in neither case arose from providential causes; nor shall any witness receive fees from both parties in the same case, but shall be paid equally by each, unless one shall be cast in all the cost. A prosecutor shall in no case receive fees as a witness.

No fees in certain cases.

ARTICLE II.

OF THE COMPETENCY OF WITNESSES.

SECTION.

- 3796. Court decides competency.
- 3797. Religious belief.
- 3798. Who are competent.
- 3799. Excepted cases.
- 3800. Idiots, insane, and children.

SECTION.

- 3801. Drunkards.
- 3802. Evidence through interpreter.
- 3803. Decision by inspection.
- 3804. Objections to competency.
- 3805. Restoration of competency.

§ 3796. The competency of a witness must be decided by the Court.

Court decides competency.

§ 3797. Religious belief goes only to the credit.

Religious belief.

§ 3798. [No person offered as a witness shall be excluded by reason of incapacity from crime or interest, or from being a party, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any Court or before any

Who are competent to testify.

in person or by deposition be a contempt to produce contents of his trunk & such; Salem 11/10/17 Clark.

Article 2.—The Competency of Witnesses.

Judge, Jury, Sheriff, Coroner, Magistrate, officer, or party, having, by law or consent of parties, authority to hear, receive, and examine evidence; but every person so offered shall be *competent*, and compellable to give evidence on behalf of either or any of the parties to the said suit, action, or other proceeding, except as follows:

1. Where one of the original parties to the contract or cause of action in issue or on trial, is dead, or is shown to the Court to be insane, or where an executor or administrator is a party in any suit on a contract of his testator or intestate, the other party shall not be admitted to testify in his own favor.

2. No person, who in any criminal proceeding is charged with the commission of any indictable offense, or any offense punishable on summary conviction, is competent or compellable to give evidence for or against himself or herself.

3. No person shall be compellable to answer any question tending to criminate himself or herself.

4. No husband shall be competent or compellable to give evidence for or against his wife in any criminal proceeding, nor shall any wife, in any criminal proceeding, be competent or compellable to give evidence for or against her husband.

5. No attorney shall be compellable to give evidence for or against his client.] (a)

§ 3799. [Nothing contained in the preceding Section shall apply to any action, suit, or proceeding, or bill, in any Court of Law or Equity, instituted in consequence of adultery, or to any action for breach of promise of marriage.] (a)

§ 3800. [Persons who have not the use of reason, as idiots, lunatics during lunacy, and children who do not understand the nature of an oath, are incompetent witnesses.] (a)

§ 3801. Drunkenness which dethrones reason and memory, incapacitates during its continuance.

§ 3802. No physical defects in any of the senses incapacitates a witness. An interpreter may explain his evidence.

§ 3803. The Court must, by examination, decide upon the capacity of one alleged to be incompetent from idiocy, lunacy, or insanity, or drunkenness, or childhood.

§ 3804. The objection to competency, if known, must be taken

Article 3.—The Examination of Witnesses.

before the witness is examined at all. It may be proved by the witness himself, or by other testimony; if proved by other testimony, the witness is incompetent to explain it away.

Objection to competency—when to be made and how proved.

§ 3805. Any act which, in the judgment of the Court, removes the ground of incompetency, will restore the competency of the witness.

Competency—how restored.

ARTICLE III.

OF THE EXAMINATION OF WITNESSES.

SECTION.

- 3806. Oath or affirmation.
- 3807. Separate examination.
- 3808. Cross-examination.
- 3809. Leading questions.
- 3810. Memorandum in aid of witness.
- 3811. Opinions of witness.
- 3812. Of experts.
- 3813. Impeaching one's own witness.

SECTION.

- 3814. Privilege of witness.
- 3815. Impeaching a witness.
- 3816. Laying the foundation.
- 3817. General character.
- 3818. Sustaining witness.
- 3819. If impeached by contradictory statements.
- 3820. State of feeling and relationship.

§ 3806. The sanction of an oath, or affirmation equivalent thereto, is necessary to the reception of any oral evidence. The Court may frame such affirmation according to the religious faith of the witness.

Oath or affirmation.

§ 3807. In all cases either party has the right to have the witnesses of the other party examined out of the hearing of each other. The Court will take proper care to effect this object as far as practicable and convenient, but any mere irregularity shall not exclude the witness.

Separate examination

§ 3808. The right of cross-examination, thorough and sifting, belongs to every party as to the witnesses called against him. If several parties to the same case have distinct interests, each may exercise this right.

Cross-examination of witnesses.

§ 3809. Leading questions are generally allowed in cross-examinations, and only in these; but the Court may exercise a discretion in granting the right to the party calling the witness, and in refusing it to the opposite party when, from the conduct of the witness, or other reason, justice requires it.

Leading questions.

§ 3810. A witness may refresh and assist his memory by the use of any written instrument, or memorandum, provided he finally speaks from his recollection thus refreshed, or is willing to swear positively from the paper.

Memorandum in aid of witness's memory.

§ 3811. Where the question under examination, and to be decided by the jury, is one of opinion, any witness may swear to his

Opinions of witness.

Conflict of Interest - Rule
24 Bu 252 : 269a 465 : 28 Bu 111

Article 3.—The Examination of Witnesses.

opinion or belief, giving his reasons therefor; but, if the issue is as to the existence of a fact, the opinions of witnesses generally are inadmissible.

Experts.

§ 3812. The opinions of experts on any question of science, skill, trade, or like questions, are always admissible; and such opinions may be given on the facts as proved by other witnesses.

Impeaching
one's own
witness.

§ 3813. A party may not impeach a witness voluntarily called by him, except where he can show to the Court that he has been entrapped by the witness by a previous contradictory statement.

Privilege of
witnesses.

§ 3814. A witness is relieved from testifying as to the same matters hereinbefore specified in relation to a party making discovery.

Impeaching
a witness.

§ 3815. A witness may be impeached—

1. By disproving the facts testified to by him.
2. By proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case.
3. By evidence as to his general bad character.

Laying the
foundation.

§ 3816. Before contradictory statements of the witness can be proved against him, (unless they are written statements, made under oath in connection with some judicial proceedings), the mind of the witness himself should be called with as much certainty as possible to the time, place, person, and circumstances attending the former statement; and if in writing, the same should be shown to the witness, or read in his hearing, if in existence; and to lay this foundation, the witness may be recalled at any time.

General
character.

§ 3817. To prove general bad character, the impeaching witness should be first asked as to his knowledge of the general character of the witness, and next as to what that character is, and lastly, he may be asked if, from that character, he would believe him on his oath.

Sustaining
witness.

§ 3818. The witness may be sustained by similar proof of character. But the particular transactions, or the opinions of single individuals can not be inquired of on either side, except upon cross-examination in seeking for the extent and foundation of the witness's knowledge.

If impeach-
ed by contra-
dictory state-
ments.

§ 3819. A witness impeached by proof of contradictory statements may be sustained by proof of general good character—the effect of the evidence to be determined by the jury.

State of
feeling and
relationship.

§ 3820. The state of the witness's feelings to the parties, and his relationship, may always be proved for the consideration of the jury.

Witness impeached may. Still be believed
7-7-80

CHAPTER VI.

OF INTERROGATORIES AND DEPOSITIONS.

SECTION.

- 3821. Who may be examined on, etc.
- 3822. If the facts cease to exist.
- 3823. Mode of obtaining commission.
- 3824. Without service.
- 3825. If there are several parties.
- 3826. Appointment of commissioners.
- 3827. Who may act as commissioners.
- 3828. How executed.

SECTION.

- 3829. Compelling witness to answer.
- 3830. Where to be examined.
- 3831. Writing out their own answer.
- 3832. Duty of commissioners.
- 3833. How received and disposed of.
- 3834. Failing to return a contempt.
- 3835. Exceptions—when taken.

§ 3821. A witness may be examined on interrogatories, by commission, at the instance of either party, in any civil cause pending in any Court in this State, when either of the following state of facts exists :

Who may
be examined
on interrog-
atories.

1. Where the witness resides out of the County.
2. Where, from the condition of his health, from age, or otherwise, he can not attend the Court, or from the nature of his business or occupation, it is not possible to secure his personal attendance without manifest inconvenience to the public, or to third persons (such as postmasters, public carriers, physicians, school-teachers, etc.)
3. Where the witness is about to remove from the County, or is about to leave home on business, for a sojourn, or tour, which will extend beyond the term of the Court.
4. All female witnesses.
5. Where he is the only witness to a material point in the case.

§ 3822. If the state of facts on which the commission issued ceases to exist before the trial of the cause, and the witness is then accessible by subpoena, the testimony taken on interrogatories can not be used.

If the fact
ceases to ex-
ist.

§ 3823. The party seeking to examine a witness by commission must prepare written interrogatories sufficiently explicit to inform the other party of the nature of the testimony sought and expected, and yet not liable to the objection of being leading questions, which must also state the residence of the witness, if known, and must serve a copy of such interrogatories on the opposite party, or his attorney, with a notice of the time of filing. The original interrogatories shall then be filed in office, and there remain for ten days, during which time cross-interrogatories may be

Mode of ob-
taining com-
mission.

Chapter 6.—Interrogatories and Depositions.

filed. At the expiration of ten days, a commission shall issue by the Clerk (or presiding Judge, if no Clerk) for the examination of such witness upon the interrogatories.

Without service. § 3824. If in any case the opposite party is beyond the jurisdiction of the Court, or can not be found, and is not represented by attorney, a notice at the Court House door for ten days of the filing of the interrogatories, shall authorize a commission to issue.

If there are several parties. § 3825. If there are more than one party opposing, and they have not a joint interest, but several independent interests are represented by different attorneys, copies must be served upon each, and the right to file cross-interrogatories belongs to each. In every case the Court should see that the party really to be affected by the evidence has an opportunity of cross-examination.

Appointment of commissioners. § 3826. Commissions shall issue generally in blank, allowing the party to select his commissioners; but in any case, the opposite party shall have the privilege of naming two competent commissioners, whose names shall be inserted in the commission, and one of whom shall act in the execution thereof, unless a good and sufficient reason be shown for his failure.

Who may act. Fees. § 3827. No person is competent to act as commissioner who would be incompetent as a juror on account of relationship, or as a witness on account of interest,* nor will the attorney of the party, or his clerk, or an agent paid to discharge this duty, be a competent commissioner. A commissioner, like a judge, should stand perfectly impartial between the parties. [Reasonable compensation may be paid to the commissioners, but not more than two dollars per day shall be taxed as costs against the party cast in the suit.] (a)

How executed. § 3828. No party, or his counsel, or his agent, or other person on his behalf should be present at the execution of the commission, and every thing attending the execution should show a perfect impartiality and freedom from bias.

Compelling witnesses to answer. § 3829. If a witness refuses to appear before the commissioners, or to answer the interrogatories, upon the certificate of one of the commissioners, or the affidavit of the party or his attorney to the fact, presented to a Judge of the Superior, or Justice of the Inferior Court, it shall be his duty to issue an order to the Sheriff, his deputy, or any Constable, to arrest the witness and bring him

* See Sections 3798-9. (a) Acts of 1866, p. 25.

Chapter 6.—Interrogatories and Depositions.

before such Judge or Justice, and after hearing his excuse and examining the interrogatories, to see that the same are legal, he shall order the said witness to be lodged in jail until he answers the same. This provision shall extend to commissions sent from the Courts of other States or the United States.

§ 3830. No female witness shall be required to leave her home to appear before commissioners, nor shall any witness be required to go out of the County, or more than ten miles from his residence; and any witness leaving his home to be examined shall have the fees of a witness subpoenaed and attending the Court. Where to be examined.

§ 3831. Witnesses may write out their own answers in the presence of the commissioners, and by their consent, but in no other way shall they prepare the same; and if the witnesses answer from written memoranda, such memoranda shall be sent with the commission, and the fact certified by the commissioners. Writing out their own answers.

§ 3832. The answers should be under oath, and certified to be so taken. They should be written out plainly, and be full and explicit to all the direct and cross interrogatories; they should be signed by the witness, and attested officially by the commissioners named in the commission, and the place of execution should also appear. The interrogatories, answers, and commissions, should be then sealed up in an envelope, with the names of the commissioners written across the seal, and directed to the officer of the Court whence the commission issued. The package can be sent by mail or intrusted to the party or some private hand. In the former case, the postmaster receiving it from the commissioner must certify to the fact, and the postmaster delivering it to the Court must certify to its reception by due course of mail. In the latter case, the person receiving and delivering it in Court must make affidavit of the fact, and of its freedom from alteration. Duty of commissioners.

§ 3833. The package thus forwarded must be received in open Court, and opened only by its leave or the consent of parties, and when thus received, shall become an office paper, to be used by either party under the direction of the Court. How received and disposed of.

§ 3834. A commission once execution must be returned, and a party failing to return or willfully abstracting such, shall be attached for contempt, and otherwise dealt with until the same is produced. Failing to return, a contempt.

§ 3835. All exceptions to the execution and return of commissions must be made in writing, and notice thereof given to the Exceptions—when taken.

Chapter 7.—Perpetuating Testimony.

opposite party before the case is submitted to the jury: *provided*, the same have been in the Clerk's office for twenty-four hours prior to the trial. Depositions read on the first trial shall not be subject to formal exceptions on the appeal.

CHAPTER VII.

PERPETUATING TESTIMONY.

SECTION.

3836. Application and order.

3837. Deposition and filing.

3838. Application recorded.

SECTION.

3839. Effect of testimony.

3840. Fees.

Application
and order.

§ 3836. If any person desires to perpetuate the testimony of a witness, in anticipation of litigation, not yet pending, and which it is not in his power to commence, he may make written application to the Judge of the Superior Court of the County where the witness resides, or if a non-resident, where he may be temporarily, stating the facts, the proof expected, and the parties probably interested on the other side, accompanying such application with the written interrogatories to be propounded to the witness; whereupon the Judge shall pass an order requiring some disinterested attorney of the Court to act as commissioner and take such testimony, providing in such order for the most effectual notice to the opposite parties, and for any cross interrogatories which may be filed.

Depositions
and filing.

§ 3837. Such commissioner, after executing the commission in the same manner as in ordinary cases, shall file the package with the Clerk of the Superior Court, with his indorsement of the fact thereon, which package shall be safely kept, until produced by him for publication under the order of the Court.

Application
recorded.

§ 3838. The application for the order, and the order, shall be entered on the minutes before delivery to the commissioner for execution.

Effect of
testimony.

§ 3839. Testimony thus taken shall be used *de bene esse* if, at the time the litigation arises, no more satisfactory examination of the witness may be had.

Fees.

§ 3840. The Court granting the order shall prescribe the fees to be paid to the commissioner and Clerk.

TITLE XI.

OF JURIES.

CHAPTER 1.—*Of Grand Juries.*CHAPTER 2.—*Of Special Juries.*CHAPTER 3.—*Of Petit Juries.*CHAPTER 4.—*Special Provisions.*

CHAPTER I.

OF GRAND JURIES.

ARTICLE 1.—*Of the Qualification of Grand Jurors.*ARTICLE 2.—*How Selected, Drawn and Summoned.*ARTICLE 3.—*Oath of the Grand Jury.*ARTICLE 4.—*Of the Power and Duty of a Grand Jury.*

ARTICLE I.

OF QUALIFICATION OF GRAND JURORS.

SECTION 3841. Qualification of Grand Jurors.

§ 3841. All free white male citizens of this State, above the age of twenty-one years, and under the age of sixty years, being neither idiots, lunatics, nor insane, who have resided in the County for six months preceding the time of serving, and who are deemed fit and proper persons, as hereinafter provided, are hereby declared qualified and liable to serve as Grand Jurors, unless exempted by law.

ARTICLE II.

HOW SELECTED, DRAWN, AND SUMMONED.

SECTION.

3842. How selected and drawn.

3843. Number to be drawn.

3844. Number to be impaneled.

SECTION.

3845. Precept to the Sheriff.

3846. How summoned.

Article 2.—How Selected, Drawn, and Summoned.

§ 3842. The Justices of the Inferior Court of each County, or
How se- lected. a majority of them, together with the Sheriff and Clerk of the Superior Court, shall convene at the Court House, in their respective Counties, on the first Monday in June next after the adoption of this Code, and biennially on the first Monday in June thereafter, and shall select from the books of the Receiver of Tax Returns for their respective Counties, the names of such able, discreet, and qualified citizens of the County as, in their judgment, are fit and proper persons to serve as Grand Jurors, and shall make a list of the names of the persons so selected, and transmit it
A list of names to be made out. under their hands to the next Superior Court of their respective Counties, and the Clerk of said Superior Court shall immediately, after receiving such list, fairly enter the same in a book for that purpose, provided at his own expense; and the Judge then presiding shall cause the Clerk of said Superior Court to make out tickets, with the names of the persons so selected written thereon; which tickets shall be put in a box, to be provided by the Clerk at the public expense—the box to have two apartments, marked number *one* and *two*; the Judge shall then lock and seal up the box, and place it in the care of the Clerk, and the key in the care
Clerk keeps box, Sheriff key, Grand Jury to be drawn in open Court. of the Sheriff, and no Grand Jury shall be drawn and impaneled but in the presence of the Judge in open Court, except as herein-after provided; nor shall any Clerk or other person having the custody of the jury box, presume, under any pretence whatever, to open said box, or transpose, or alter the names, unless it be by the direction of the Judge in open Court, attending for the purpose of drawing a jury, except as hereinafter excepted.

§ 3843. The Judge in open Court shall break the seal and un-
How drawn. lock the box, and cause to be drawn from the apartment of the same marked number *one*, not less than twenty-three nor more than thirty-six names, unless otherwise directed by law, to serve as Grand Jurors, which names so drawn out shall, after an account is taken of them at each time of drawing, be carefully deposited in the other apartment of said box marked number *two*; and when all the names shall have been drawn out of apartment number one, the drawing shall commence from apartment number two, and the tickets be returned to number one, and so on alternately; and no name so deposited shall, on any pretence, be thrown out or destroyed, except when it is satisfactorily shown to the Judge that the juror is either dead, removed out of the County, or is otherwise disqualified by law.

Article 2.—How Selected, Drawn, and Summoned.

§ 3844. No Grand Jury shall consist of less than eighteen or Number to serve. more than twenty-three.

§ 3845. Within thirty days after the Grand Jury is drawn, as Precept to the Sheriff. hereinbefore provided, the Clerk of the said Superior Court shall issue and deliver to the Sheriff, or his lawful deputy, a precept for summoning the same, to which he shall annex a panel containing the names of the persons drawn as aforesaid, exactly transcribed from the minute book, and in the mandatory part of the precept the following words shall be written—viz: “The several persons named in the panel hereunto annexed.”

§ 3846. Upon the receipt of the precept mentioned in the pre- How served. ceding Section, the Sheriff, or his deputy, shall cause the persons whose names are written in the panel annexed to the precept to be served personally, or by leaving the same at his residence, with a summons, at least ten days before the sitting of the Court for which they are drawn, which summons shall be, in substance, as follows—to wit: “By virtue of the precept to me directed, you are hereby commanded to appear before the presiding Judge, at the next Superior Court to be held at the Court House, in and for the County of ———, on the ——— day of ———, at ten o’clock in the forenoon of that day, to be sworn as a Grand Juror;” which summons shall be signed by the Sheriff, or his lawful deputy, who shall make due return of such precept, setting forth the names of all persons served as aforesaid, and also the names of those not served, together with the reason why they were not served. [If there is no qualified Sheriff in the County, the duties prescribed in this Section may be performed by a Bailiff, who shall be entitled to the fees of a Sheriff for like service.] (a) Form of notice.

ARTICLE III.

OATH OF THE GRAND JURY.

SECTION.

3847. Oath of Grand Jury.

SECTION.

3848. Oath of Bailiff to Grand Jury.

§ 3847. The following oath shall be administered to the fore- Oath of the Grand Jury. man of all Grand Juries—viz: “You, as foreman of the Grand Jury for the County of ———, shall diligently inquire and true

(a) Acts of 1866, p. 137.

Article 3.—Oath of the Grand Jury.

presentments make of all such matters and things as shall be given you in charge, or shall come to your knowledge, touching the present service ; the State's counsel, your fellows', and your own, you shall keep secret, unless called upon to give evidence thereof in some Court of law in this State ; you shall present no one from envy, hatred, or malice, nor shall you leave any one unpresented from fear, favor, affection, reward, or the hope thereof, but you shall present all things truly, and as they come to your knowledge. So help you God." And the same oath thus taken by the foreman shall be taken by each and every member of any and all Grand Juries in this State.

§ 3848. The following oath shall be administered to all Bailiffs attending Grand Juries—to wit: "You do solemnly swear that you will diligently attend the Grand Jury during the present term, and carefully deliver to that body all such bills of indictment, or other things, as shall be sent to them by the Court, without alteration, and as carefully return all such as shall be sent by that body to the Court. So help you God."

Oath of Bailiff to the Grand Jury.

ARTICLE IV.

OF THE POWER AND DUTY OF A GRAND JURY.

SECTION.

- 3849. When bound to present.
- 3850. Foreman may swear witnesses.
- 3851. Power as to error in tax books.

SECTION.

- 3852. Shall examine County offices.
- 3853. Shall examine the list of voters.

§ 3849. Whilst Grand Jurors are bound only to notice or make presentments of such offenses as may or shall come to their knowledge or observation after they shall have been sworn ; yet they have the right and power, and it is their duty, as jurors, to make presentments of any violation of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations.

When bound to notice of offenses.

§ 3850. The foreman of each Grand Jury in this State may administer the oath prescribed by law to all witnesses required to testify before such Grand Jury, and may also examine such witnesses.

Foreman may swear witnesses.

§ 3851. Whenever it shall satisfactorily appear to the Grand Jury of any County in this State that the Receiver of Tax Returns has committed an error in making an entry in his digest, of

Mistake of Tax Receiver.

Article 4.—The Power and Duty of a Grand Jury.

either quantity or quality of property returned in such digest, or in the amount of taxes assessed, such Grand Jury may recommend the Inferior Court of their County and the Comptroller General of the State, to cause such error (particularly specifying the same) to be corrected.

§ 3852. In addition to the duties of the Grand Jury, as indicated in the oath administered to them, and as required by law, it shall be their special duty, from term to term of the Superior Court, to inspect and examine the offices, papers, books, and records of the Clerks of the Superior and Inferior Courts, and also the books, papers, records, accounts, and vouchers of the County Treasurer, and cause any such Clerk or County Treasurer who shall have failed or neglected to do his duty as required by law to be presented for non-performance of official duty.

Shall examine the offices, books, and records of each term.

§ 3853. It shall also be the duty of the Grand Jury of the several Counties in this State to carefully examine the list of voters required by law to be laid before them, and if there be found on such list any voter not entitled to vote according to the provisions of this Code, to present such voter for such violation of law.*

Shall examine a list of the voters.

CHAPTER II.

OF SPECIAL JURIES.

SECTION.

3854. How selected and sworn.

3855. Oath of special jury.

SECTION.

3856. No other oath in divorce cases.

3857. Oath of Bailiff to special jury.

§ 3854. All special juries shall be taken from the Grand Jury, and shall be stricken in the presence of the Court in the following manner: The Clerk shall furnish a list of the Grand Jurors present and then impaneled, from which the parties or their attorneys may strike out one alternately, until there shall be but twelve left, who shall be forthwith impaneled and sworn as special jurors; in cases of appeal by consent, the plaintiff shall

How selected and sworn.

*In addition to the foregoing provisions, the following note may aid Grand Juries in the discharge of their official duties.

1. They may recommend extraordinary tax for County purposes.
2. May examine and allow Tax Collector's insolvent list.
3. May examine and recommend abatement in certain cases. See "Tax."
4. Every Fall Term examine Clerk's account of sales of estrays.
5. At Spring Term may recommend a tax for educational purposes. See appropriate heads.

Chapter 2.—Special Juries.

strike first, and in all other cases the appellant shall strike first, and should either party fail or refuse to strike such special jury after being notified, or required so to do, the presiding Judge shall, in behalf of the party so failing or refusing to strike, proceed in the same way and manner as if the party failing or refusing were striking said special jury in person, or consenting to the same.

§ 3855. The following shall be the oath of all special juries—
The oath of a special jury. to wit: “You shall well and truly try each cause submitted to you during the present term, and a true verdict give, according to the law as given you in charge, and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party, provided you are not discharged from the consideration of the case submitted. So help you God.”

§ 3856. No additional oath shall hereafter be necessary in cases of divorce.
No additional oath in divorce cases.

§ 3857. The following oath shall be administered to all Bailiffs sworn to take charge of special and Petit Juries in the Superior Courts of this State—to wit: “You shall take this Jury, and all others committed to your charge during the present term, to the jury room, or some other private and convenient place, where you shall keep them without meat, drink, or fire, candle-light and water only excepted, (unless otherwise directed by the Court.) You shall not speak to them yourself, nor suffer others to speak to them, unless it be by leave of the Court to ask them if they have agreed on a verdict, or are likely to agree. All this you shall do to the best of your skill and power. So help you God.”
Oath of Bailiffs taking charge of Petit Juries.

CHAPTER III.

OF PETIT JURORS.

ARTICLE 1.—*Qualification of Petit Jurors.*

ARTICLE 2.—*How Selected, Drawn, Summoned, and Sworn.*

Article 1.—Qualifications of Petit Jurors.

ARTICLE I.

QUALIFICATION OF PETIT JURORS.

SECTION. 3858. Qualification of Petit Jurors.

§ 3858. All white male citizens of this State above the age of ^{Qualification} twenty-one years, and under the age of sixty years, who are neither idiots nor lunatics, and who have resided in the County for six months immediately preceding the time at which they are called upon to serve, are hereby declared competent, qualified, and liable to serve as Petit Jurors.

ARTICLE II.

HOW SELECTED, DRAWN, SUMMONED, AND SWORN.

SECTION.

3859. Selected, drawn, and summoned.

SECTION.

3860. Oath of Petit Jurors.

§ 3859. The citizens of the County whose names remain on the books of the Receiver of Tax Returns after the Grand Jurors have been selected, and who possess the qualifications prescribed in the preceding Section, shall constitute the body of Petit Jurors for service in the Superior Courts; and a list of their names shall be made out and returned, written upon tickets, and placed in a box in the same manner as required in cases of Grand Jurors; and from the box there shall be drawn a panel of persons, consisting of not less than thirty-six, nor more than forty-eight names, unless otherwise directed by law, who shall be summoned in the same manner and under the same regulations which are prescribed for drawing and summoning Grand Jurors.

How selected.

How drawn.

How summoned.

§ 3860. The following oath shall be administered to Petit Jurors in all civil cases—viz: “You shall well and truly try the causes depending between the parties at variance, and a true verdict given according to evidence. So help you God.”

Their oath

NOTE.—For special provisions in relation to drawing Grand and Petit Jurors in Counties in which the Superior Court sits two or more weeks, see special acts not included in this Code or repealed by it.

CHAPTER IV.

SPECIAL PROVISIONS.

SECTION.

3861. When Judge fails to draw a jury.
 3862. Juries may be made by talesman.
 3863. Defaulters—how dealt with.
 3864. Jury box destroyed—how replaced.
 3865. Persons exempt from jury duty.
 3866. May recommend extra tax.

SECTION.

3867. Oath of jury in claim cases.
 3868. Failure of Court—jury stands over.
 3869. When jury lists, etc., may be made.
 3870. May be fined for contempt.
 3871. May have refreshments.

Upon failure
of the Judge
to draw.

§ 3861. If, from any cause, the Judge of the Superior Court shall fail to draw Grand and Petit Juries, as hereinbefore required, the Justices of the Inferior Court, or a majority of them, together with the Sheriff and Clerk of the Superior Court of the County in which such failure occurs, shall assemble at the Court House in such County [a sufficient length of time to perfect service on said jurors] (a) previous to the sitting of the Court at which the jurors are required to serve, and proceed to open their jury boxes, and draw therefrom the required number of names to serve as Grand and Petit Jurors at their next depending Superior Court; and the juries being so drawn, the boxes shall be again sealed up, and with the key, delivered to the custody of the proper officer.

Jurors sum-
moned fail-
ing to at-
tend, etc.

§ 3862. When from any cause there shall not be present a sufficient number of persons, drawn and summoned as hereinbefore required, to make up a Grand Jury, or the Petit Juries, the Court may order the Sheriff, his deputy, the Coroner, or any other disinterested person, to summon bystanders or others, qualified as hereinbefore prescribed, until the panel shall be complete.

Defaulting
jurors—how
dealt with.

§ 3863. [The Clerk of the Court shall make due entry on the minute book of the Court, of the appearance of all jurors, and shall likewise enter and make report of the names of all such as shall make default in appearing; and if any person who shall be drawn, impaneled, summoned, and returned, to serve as a juror at any Court according to law, shall neglect or refuse to appear, or after appearance shall refuse to serve, or shall absent himself without leave of the Court, then and in that case it shall be lawful for the Court to fine such person, if a Petit Juror, in a sum not exceeding twenty dollars, and if a Grand Juror, in a sum not exceeding forty dollars, unless such juror shall show good and

Chapter 4.—Special Provisions.

sufficient cause of excuse, to be made on oath before any Justice of the Peace, and filed in the Clerk's office of such Court within thirty days after the opening of said Court; the merits of which excuse shall be determined by the next succeeding Court.] (a)

§ 3864. When the jury list and jury boxes of any County in this State shall be destroyed, the Justices of the Inferior Court, or a majority of them, together with the Clerk of the Superior Court and the Sheriff, shall, as soon thereafter as practicable, meet at the Court House, and make out jury lists, and arrange the names in boxes as hereinbefore directed.

Jury box
destroyed—
how sup-
plied.

§ 3865. All the Justices of the Inferior Court and clergymen of this State may at their own option be exempt from the service and duties of a Grand Juror; [and all professors of any college or teacher of any County or public school in this State, and all persons actually engaged in attending to a grist mill, are exempt from all jury duty so long as they are thus engaged.] (b)

Persons ex-
empt from
jury duty.

§ 3866. Upon the recommendation of the Grand Jury, the Justices of the Inferior Court of the several Counties in this State may assess and raise a tax for the reasonable compensation of Grand and Petit Jurors, or either of them, and at their pleasure and discretion discontinue such tax, and again resume and reassess and raise it upon the recommendation aforesaid; the jury and confession fees paid into the County Treasury being in such case a part of the fund for that purpose: and when such tax is raised, the Clerk of the Superior Court shall issue to the jurors, whose compensation is provided for as aforesaid, a certificate which shall be deemed and held a warrant on the County Treasury for the amount of the money due such juror, according to the *per diem* pay fixed by the Inferior Court, and the County Treasurer shall pay the same out of the fund so raised by taxation as aforesaid, and the Tax Collector shall collect the tax and pay it over as County tax.

The Grand
Jury may re-
commend an
extra tax.

How paid
out.

§ 3867. The following oath shall be administered to all Juries impaneled to try claim cases, whether at common law or on the appeal—to wit: "In addition to the oath you have already taken, you do further swear that you will give such damages, not less than *ten per cent.*, as may seem reasonable and just to the plaintiff against the claimant in case it shall be sufficiently shown to you that such claim was made for delay only. So help you God."

Oath of the
jury in claim
cases.

§ 3868. Whenever there shall be a failure of the Superior Court, On failure of the Court. in consequence of the non-attendance of the Judge, or other cause, the jurors summoned for such Court shall stand over to the next succeeding term in the same manner as suitors and witnesses do.

§ 3869. Whenever the proper officers in any County in this When list is not made. State shall fail to meet and make out jury lists and arrange jury boxes for their respective Counties at the time directed in this Code, the same may be done at any time before the next term of the Superior Court to be held in the County after the time at which the lists should have been made out.

§ 3870. If any jury shall commit a contempt of Court, or shall May be fined for contempt break up before giving in their verdict in any civil case without leave of the Court, the Court may declare a mistrial in the case, and shall fine each of the offending jurors in a sum not exceeding one hundred dollars.

§ 3871. When any jury is confined in the investigation of a May have refreshments. case for a length of time which exposes them to hunger and cold, the Court may, on application from such jury, direct them to be furnished with such refreshments as the presiding Judge may deem meet and proper; and the said Judge shall have full power to draw his warrant on the County Treasurer of the County where the investigation is had for the payment of the same, which the said Treasurer shall pay out of any funds on hand. The Judge may also allow the jury fire if the circumstances require it.

TITLE XII.

PROCEEDINGS AGAINST OFFICERS OF COURT.

CHAPTER I.

PROCEEDINGS AGAINST OFFICERS OF COURT.

SECTION.

- 3872. Officers subject to suit, etc.
- 3873. Liability of Sheriffs.
- 3874. Demand of money collected.
- 3875. Service of demand—how proved.
- 3876. Retired officers may be ruled.
- 3877. Rules *ni si* against officers.
- 3878. Answer and proceedings.

SECTION.

- 3879. When ruled without notice.
- 3880. Judgment on rule.
- 3881. Defaulting officers—how punished.
- 3882. Delinquent attorneys.
- 3883. Rule against deputy Sheriff.
- 3884. Service of rule against Sheriff.
- 3885. Rule against Justices of the Peace.

Chapter 1.—Proceedings Against Officers of Court.

§ 3872. All Sheriffs, under Sheriffs, Coroners, Jailors, and Constables, and other officers of Court, shall be liable to all actions, suits, and disabilities whatever, which they, or either of them, may or shall incur for or on account of the escape of prisoners, or for or in respect of any other matter or thing whatever, relating to or concerning their respective offices.

Officers of
Court liable
for suits, etc.

§ 3873. The Sheriffs of this State shall be liable to an action on the case, or an attachment for contempt of Court, at the option of the party, whenever it appears that such Sheriffs have injured such party, either by a false return, or by neglecting to arrest a defendant, or to levy on the property of the defendant, or to pay over to the plaintiff, or his attorney, any moneys collected by such Sheriffs by virtue of any *fi. fa.* or other legal process, or to make a proper return of any writ, execution, or other process put into the hands of such Sheriff.

Liability
of Sheriffs.

§ 3874. If any Sheriff, Coroner, Justice of the Peace, Constable, Clerk of the Superior or Inferior Court, or attorney at law, shall fail, upon application, to pay to the proper person, or his attorney, any money they may have in their hands, which they may have collected by virtue of their office, the party entitled thereto, or his attorney, may serve said officer with a written demand for the same, and if not then paid, for such neglect or refusal, the said officer shall be compelled to pay at the rate of twenty per cent. per annum upon the sum he has in his hands, from the date of such demand, unless good cause be shown to the contrary.

Money col-
lected by of-
ficers may
be demand-
ed, etc.

§ 3875. A copy of said demand produced in Court, verified by affidavit, stating when and where the original was served upon the officer, shall be *prima facie* evidence of the date and service thereof.

Service of
demand—
how prov-
ed.

§ 3876. Sheriffs, deputy Sheriffs, Coroners, Clerks of the Superior and Inferior Courts, Justices of the Peace, and Constables, shall at any and all times be subject to the rule and order of the Courts after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office.

Officers may
be ruled af-
ter going out
of office.

§ 3877. The Judges of the Superior Court, Justices of the Inferior Court, and Justices of the Peace, respectively, upon application, may grant rules *ni si* against all officers subject thereto, in vacation, or in term time, which rule *ni si* shall contain a full statement of the case in which the officer is called upon to show

Rules *ni si*
against offi-
cers.

Chapter 1.—Proceedings Against Officers of Court.

cause, and also the time and place of hearing, and, if granted in vacation, the officer called on shall be served with a copy thereof before the sitting of the Court to which it is made returnable, and if granted in term time, such service shall be perfected before the case is called for hearing.

§ 3878. The officer called on by rule *ni si*, as provided in the preceding Section, shall fully respond in writing to said rule, which answer shall be under oath, taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the Court may deem the answer sufficient or not. The movant of the rule, however, may traverse the truth of such answer, in which case an issue shall be made up and tried by a jury at the same term, unless good cause of continuance be shown, which may be done once only by either party. Upon the trial of such issue, the Court shall discharge the rule or make the same absolute, according as the verdict of the jury may be for or against the officer.

§ 3879. If a Sheriff or other officer shall designedly absent himself from his Court, the presiding Judge or Justices, in all such instances, when required by plaintiffs in execution, or their attorneys, shall grant a rule absolute against such Sheriff without the notice aforesaid, unless it is proven at such term of the Court, that the said Sheriff, from sickness, is not able to attend said Court.

§ 3880. When a rule absolute has been obtained against any officer for the payment of money as provided in this Chapter, such rule shall have the same lien upon the property, both real and personal, of such officer as an ordinary judgment at law, and if not punctually paid, such demand shall thereafter draw an interest at the rate of twenty per cent. per annum, and the plaintiff may have either an attachment or an execution issued from said rule absolute, and may have either of said processes returned, and the other issued at pleasure.

§ 3881. If any Sheriff or Coroner shall fail to make a proper return of all writs, executions, and other processes put into his hands, or shall fail to pay over all moneys received on such executions, on his being required so to do by the Court, he shall be liable to an action as for contempt, and may be fined, imprisoned, or removed from office, in the manner prescribed by the Constitution and laws.

Chapter 1.—Proceedings Against Officers of Court.

§ 3882. If any attorney shall retain in his hands any money received by him for any client, after being ordered by the Court to pay over the same to the principal, he shall be stricken from the list of attorneys.

Delinquent
attorney to
be stricken
from the rol

§ 3883. All Deputy Sheriffs shall be liable to be ruled and attached in the same way and manner as Sheriffs; but the liability of the Sheriff shall not be affected by any such proceeding against his deputy, when the same is not effective.

Deputy
Sheriffs sub-
ject to rule,
etc.

§ 3884. Whenever the Sheriff or his deputy is a party to said rule, or interested therein, and there be no Coroner or other lawful officer of said County to execute the same, it shall be the duty of the Judge, or Justice, or Justices of said Court to appoint, *pro tempore*, a special officer to carry out and effectuate the order of said Court, which said officer, so appointed, shall be allowed the usual fees of Sheriffs for like service.

Rule against
Sheriff and
deputy — by
whom serv-
ed.

§ 3885. Justices of the Peace and Constables shall be so far considered officers of the Superior Court, as to be subject to be ruled under similar regulations as are herein provided in relation to any other officer of said Court, and shall be subject to all the pains and penalties are herein provided, in case of a rule absolute against Sheriffs and other officers of said Court, when they, or either of them, shall refuse or neglect to pay over any money which they may have received or collected in their official capacity.

Justices of
the Peace
and Constables — where
ruled.

TITLE XIII.

OF PROCEEDINGS TO FORECLOSE MORTGAGES.

CHAPTER 1.—*Of Mortgages on Real Estate—how Foreclosed.*

CHAPTER 2.—*Of Mortgages on Personalty—how Foreclosed.*

CHAPTER I.

MORTGAGES ON REAL ESTATE—HOW FORECLOSED.

ARTICLE 1.—*Of the Application—when and how made.*

ARTICLE 2.—*Defenses, Pleas, etc.—when and how made.*

ARTICLE 3.—*Of the Judgment, Disposition of Property, etc.*

ARTICLE 4.—*Of the Proceeds of Sale—how Appropriated.*

Article 1.—Application to Foreclose, etc.

ARTICLE I.

APPLICATION TO FORECLOSE—WHEN, WHERE, AND HOW MADE, AND PROCEEDINGS THEREON.

SECTION.

3886. Mortgage on land—how foreclosed.

SECTION.

3887. Executors, etc., may foreclose.

Foreclosure
of mortgage
on realty.

§ 3886. Mortgages on real estate in Georgia shall be foreclosed in the following manner—to wit: Any person applying and entitled to foreclose such mortgage shall, by himself, or his attorney, petition to the Superior Court of the County wherein the mortgaged property may be, which petition shall contain a statement of the case, the amount of the petitioner's demand, and a description of the property mortgaged; whereupon the Court shall grant a rule directing the principal, interests and costs to be paid into Court, on or before the first day of the next term immediately succeeding the one at which such rule is granted; which rule shall be published once a month for four months, or served on the mortgager, or his special agent or attorney, at least three months previous to the time at which the money is directed to be paid into Court as aforesaid.

By repre-
sentative of
deceased
mortgagee.

§ 3887. If the person entitled to foreclose the mortgage on real estate be dead, the application and proceeding to foreclose may be made and prosecuted by his executor or administrator.

ARTICLE II.

OF PLEAS, DEFENSES, ETC.—WHEN AND HOW MADE.

SECTION.

3888. Defenses against foreclosure.

3889. Third persons can not defend.

SECTION.

3890. Proceedings against executors, etc

3891. Issue—how tried.

Defense
against fore-
closure of
mortgage on
realty.

§ 3888. When a rule *ni si* to foreclose a mortgage on real estate has been granted, and the same has been published or served, as hereinbefore required, the mortgager, or his special agent or attorney, may appear at the term of the Court at which the money is directed to be paid, and file his objections to the foreclosure of such mortgage, and may set up and avail himself of any defense which he might lawfully set up in an ordinary suit instituted on the debt or demand secured by such mortgage, and which goes to show that the applicant is not entitled to the foreclosure sought,

Article 3.—The Judgment and Disposition of Mortgaged Property.

or that the amount claimed is not due; *provided*, that the facts of such defense are verified by the affidavit of such mortgager, or special agent, or attorney, at the time of filing the same.

§ 3889. If the mortgager, or his special agent, or attorney, fail to set up the defense provided for in the preceding Section, it is not competent for any third person to interpose; neither will the Court itself, of its own motion, do so. Third persons can not defend.

§ 3890. When the mortgager is dead, the proceeding to foreclose the mortgage on real estate may be instituted against his executor or administrator. Proceeding against representative of mortgager.

§ 3891. When proceedings to foreclose a mortgage are instituted, and a defense is set up thereto, as hereinbefore provided, the issue shall be submitted to and tried by a special jury, as in appeal cases. Issue—how tried.

ARTICLE III.

OF THE JUDGMENT AND DISPOSITION OF MORTGAGED PROPERTY.

SECTION 3892. Judgment of foreclosure and sale.

§ 3892. When the mortgager, after being directed so to do, fails to pay the principal, interest, and cost, as hereinbefore required, and also fails to set up and sustain his defense against the foreclosure of the mortgage, the Court shall give judgment for the amount which may be due on such mortgage, and shall order the mortgaged property to be sold in the manner and under the same regulations which govern Sheriff's sales under execution. [And the provisions of Section 3903 of this Code shall apply as well to mortgages upon real property as to mortgages upon personal property.] (a) Judgment of foreclosure and sale of mortgaged property.

ARTICLE IV.

PROCEEDS OF SALE OF MORTGAGED PROPERTY—HOW APPROPRIATED.

SECTION.

3893. Disposition of proceeds.

SECTION.

3894. When proceeds may be retained.

§ 3893. The money arising from the sale of mortgaged property,

(a) Acts of 1866, p. 25.

Article 1.—The Application of Foreclosure, etc.

Proceeds of sale—how disposed of. brought to sale under the regulations hereinbefore prescribed, shall be paid to the person foreclosing the mortgage, unless claimed by some other lien in the hands of the officer, which in law has priority of payment over the mortgage; and when there shall be any surplus after paying off such mortgage, or other liens, the same shall be paid to the mortgager, or his agent.

When proceeds may be retained by the Court. § 3894. If the mortgage is given to secure a debt due by installments, and is foreclosed before any one of the installments falls due, and there is a surplus of funds, as above stated, the Court may retain the funds, or order the same invested to meet the installment still unpaid.

CHAPTER II.

OF MORTGAGES ON PERSONAL PROPERTY—HOW FORECLOSED.

ARTICLE 1.—*Of the Application—by whom and how Made.*

ARTICLE 2.—*Of the Defenses—when and how Made.*

ARTICLE I.

OF THE APPLICATION TO FORECLOSURE—BY WHOM AND HOW MADE.

SECTION.

3895. On personalty—how foreclosed.

3896. Levy and sale of property.

SECTION.

3897. When the *fi. fa.* may claim money.

3898. Property may be sold by consent.

Foreclosure of mortgages on personalty. § 3895. Mortgages on personal property shall be foreclosed in the following manner—to wit: Any person holding a mortgage on personal property, and wishing to foreclose the same, shall either in person, or by his agent or attorney in fact, or at law, go before some officer of this State who is authorized by law to administer oaths, or a commissioner for this State residing in some other State and make affidavit of the amount of principal and interest due on such mortgage, which affidavit shall be annexed to such mortgage, and when such mortgage, with such affidavit annexed thereto, shall be produced to the Judge of the Superior Court, whose Circuit embraces the County wherein the mortgager resides at the date of the foreclosure, if a resident of this State, or where he resided at

Affidavit.

Article 1.—The Application of Foreclosure, etc.

the date of the mortgage if not a resident of this State, it shall be the duty of such Judge to pass an order declaring such mortgage foreclosed, and directing the Clerk of the Superior Court of said County to issue an execution for such principal and interest, ^{Order of Judge.} and for the sale of the mortgaged property as on a judgment, which order shall also be annexed to the mortgage; and when the mortgage, with the affidavit and order aforesaid annexed thereto, are delivered to the said Clerk of the Superior Court, it shall be the duty of such Clerk to issue an execution, directed to all and singular the Sheriffs and Coroners of this State, commanding a sale of the mortgaged property to satisfy the said principal and interest, together with the costs of the proceedings to foreclose the said mortgage. ^{Execution.}

§ 3896. When the execution mentioned in the preceding Section shall be delivered to the Sheriff or Coroner, as the case may be, it shall be his duty to levy on the mortgaged property where- ^{Levy and sale of mortgaged property.} soever the same may be found, and after advertising the same in one or more of the public gazettes of this State, [weekly for eight weeks] (a) before the day of sale, the said Sheriff or Coroner shall put up and expose said property to sale at the time and place, and in the same manner as govern in case of Sheriffs' sales.

§ 3897. If other *fi. fas.* are levied on the mortgaged property, ^{Mortgaged *fi. fa.* may claim money when.} and the same is sold after an advertisement of only thirty days, the mortgage *fi. fa.* may, nevertheless, claim the proceeds of the sale if its lien is superior.

§ 3898. If a mortgage on realty or personalty is not foreclosed, and the equity of redemption is levied on by other *fi. fas.*, by consent of the mortgager and mortgagee, and the plaintiff in the *fi. fa.* levied, the entire estate may be sold, and the mortgagee claim under his lien, in the same manner as if his mortgage was foreclosed. ^{Mortgaged property may be sold by consent without foreclosure.}

ARTICLE II.

OF THE DEFENSES—WHEN AND HOW MADE.

SECTION.

3899. Affidavit of illegality.
3900. Proceedings thereon.
3901. Sale and disposition of proceeds.

SECTION.

3902. Executors, etc., may foreclose.
3903. Contest of lien by third persons.

(a) Acts of 1866, p. 163.

Article 2.—Defenses—when and how Made.

§ 3899. When an execution shall issue upon the foreclosure of a mortgage on personal property, as hereinbefore directed, the mortgager, or his special agent, may file his affidavit of illegality to such execution, in which affidavit he may set up and avail himself of any defense which he might have set up according to law, in an ordinary suit upon the demand secured by the mortgage, and which goes to show that the amount claimed is not due.

§ 3900. When an affidavit of illegality shall be filed to a mortgage execution, as provided for in the preceding Section, the Judge who passed the order of the foreclosure may order the levying officer to postpone the sale of the mortgaged property, upon the mortgager, or his special agent, or attorney, giving bond with good and sufficient security, in double the amount of such execution, conditioned for the return of such property when called for by the levying officer, which bond shall be made payable to the plaintiff, who may sue and recover thereon when the condition is broken; and when such affidavit of illegality is filed, and such order of postponement is passed, and such bond has been given, the levying officer shall postpone the sale of said property, and return all the proceedings and papers to the next term of the Court whose Clerk issued the execution, where the questions and issues shall be tried as other cases of illegality; and the jury shall be sworn to give at least twenty-five per cent. damages to the plaintiff on the principal sum, in case it shall appear that the affidavit of illegality was filed for a delay only.

§ 3901. If the mortgager fails to set up and sustain his defense as hereinbefore authorized, the mortgaged property shall be sold, and the proceeds of the sale shall be applied to the judgment of said mortgage execution, unless such proceeds are claimed by some other lien in the hands of the officer, entitled in law to priority of payment; and if, after the satisfaction of such *fi. fa.* or other lien, there may be any surplus, the same shall be paid to the mortgager or his agent.

§ 3902. When the holder of a mortgage on personal property is dead, the affidavit and proceedings to foreclose may be made and prosecuted by his executor or administrator; and if the mortgager be dead, his legal representative may set up the same defenses which he could do if living.

§ 3903. If any creditor of the mortgager, whether his debt be in judgment or not, desires to contest the validity or fairness of

of Affidavit
of illegality
to mortgage
fi. fa.

Proceed-
ings when
illegality is
filed.

Sale of mort-
gaged prop-
erty and dis-
position of
proceeds.

Represent-
ative of de-
ceased mort-
gagee may
foreclose.

Article 1.—Establishment of Lost Papers in Superior Courts.

the mortgage lien or debt, he may make an affidavit of the grounds upon which he relies to defeat such mortgage, and upon filing the same with the levying officer, together with a bond and good security, payable to the mortgagee, and conditioned to pay all costs and damages incurred by the delay, if the issue be found against the contestant, it shall be the duty of such officer to return the same to the Court to which the mortgage *fi. fa.* is made returnable, to be tried in the manner prescribed above for an affidavit of illegality by the mortgager.

How third persons may contest mortgage lien.

TITLE XIV.

OF PROCEEDINGS TO ESTABLISH LOST PAPERS.

CHAPTER I.

LOST PAPERS—WHEN, WHERE, AND HOW ESTABLISHED.

ARTICLE 1.—*Establishment of Lost Papers in Superior Courts.*

ARTICLE 2.—*Establishment of Lost Papers in Justices' Courts.*

ARTICLE I.

ESTABLISHMENT OF LOST PAPERS IN SUPERIOR COURTS.

SECTION.

- 3904. Office papers established on motion.
- 3905. When office papers.
- 3906. Other papers—how established.
- 3907. Continuance—when granted.
- 3908. Rule absolute.

SECTION.

- 3909. Certified indorsement of copy.
- 3910. Suits on lost papers.
- 3911. Oyer can not be demanded.
- 3912. Lost executions—how established.

§ 3904. Upon the loss of any original bill in equity, answer, replication, declaration, plea, bill of indictment, special presentment, or other office paper, a copy may be established *instanter* on motion.

Office papers may be established *instanter*.

§ 3905. The instrument sued on shall be deemed an office paper, after the case of which it is the foundation has gone to the appeal.

Papers sued on are office papers—when.

Article 1.—Establishment of Lost Papers in Superior Courts.

§ 3906. The owner of a paper, (other than an office paper,
How other papers are established. and which can not be sued on and collected in a Justices' Court,) lost or destroyed, desiring to establish the same, shall present to the Clerk of the Superior Court of the County where the
Petition. maker of the paper resides, if a resident of this State, a petition in writing, together with a copy, in substance, of the paper lost or destroyed, as near as he can recollect, which copy shall be sworn to by the petitioner, his agent, or attorney; whereupon the Clerk shall issue a rule *ni si* in the name of the
Rule ni si. Judge of the Superior Court, calling upon the opposite party to show cause, if any he has, why the copy sworn to should not be established in lieu of the lost or destroyed original; which rule shall be served by the Sheriff, his deputy, or any Constable of this State, personally, upon the party, if to be found in this State,
Rule ni si—how served. twenty days before the sitting of the Court to which the rule *ni si* is made returnable; and if the party can not be found in this State, then the rule shall be published in some public gazette of this State for the space of three months before the final hearing of the rule.

§ 3907. In a proceeding to establish lost papers under the provisions of the preceding Section, no continuance shall be granted,
Continuance—when granted. unless it appear reasonable and just to the Court; nor shall a continuance be allowed to the same party more than once, except for providential cause.

§ 3908. When the rule *ni si* has been duly served, as hereinbefore provided, the Court shall grant a rule absolute establishing the copy of the lost or destroyed paper sworn to, unless good and sufficient cause be shown why such rule absolute should not be granted.
Rule absolute.

§ 3909. When the copy is established, the Clerk of the Court in which it is done shall furnish the copy to the party who had it established, with a certified indorsement thereon of the day and term of the Court when the rule absolute was granted; *provided*, all costs of the proceeding are paid.
Certified indorsement of copy.

§ 3910. If the paper lost or destroyed be a note, bill, bond, or other instrument upon which suit may be brought, the owner thereof may institute suit thereon so soon as the rule *ni si* has been issued as hereinbefore provided for, and it shall be set forth in the declaration that the paper sued on is lost or destroyed: and in no case shall there be a judgment had in such suit until it
Suit on lost paper.

Article 1.—Establishment of Lost Papers in Superior Courts.

shall be determined whether the application to establish the paper be granted or not; and if granted, then judgment shall be had as in other cases.

§ 3911. In a suit, such as provided for in the preceding Section, Oyer of lost paper shall not be demanded. Oyer of the paper sued on shall not be demanded until at the time of the rendition of judgment in such suit; and then if the plaintiff produce a copy of the paper, with a certified indorsement thereon by the Clerk of the Court in which it was established, as hereinbefore directed, it shall be taken and considered as the original. *1892 407*

§ 3912. When any execution which shall have been regularly issued from the Superior Courts of this State shall be lost or destroyed, the Judge of the Court from which the same issued may at any time, either in open Court or vacation, upon proper application being made and the facts proven by the affidavit of the applicant, his agent, or attorney, or by any other satisfactory proof, grant an order for the issuing of an alias execution in lieu of the lost original execution. When execution is lost alias may issue at any time. *1892 636*

ARTICLE II.

ESTABLISHMENT OF LOST PAPERS IN THE JUSTICES' COURT.

SECTION.

3913. Of papers belonging to a suit.
3914. Establishment of other papers.

SECTION.

3915. Establishment of lost executions.
3916. Who may be parties.

§ 3913. When any bond, bill, note, or other evidence of debt, or any summons, execution, or any other paper belonging or appertaining to any suit or other proceeding in any Justices' Court of this State, shall be lost, destroyed, or mislaid from the hands of the Justice of the Peace, such Justice may, by reason and virtue of his office, establish instanter a copy in substance of such paper in lieu of the original so lost; and if any such paper be lost, destroyed, or mislaid from the hands of any person other than the Justice of the Peace, the party, plaintiff or defendant, or any one interested, wishing to use such lost paper, shall be permitted to establish and use in lieu of the original a substantial copy of the same, by making affidavit of the loss of the original, and that the copy proposed to be used is a copy in substance of the lost original. Papers belonging to suits when lost may be established at once.

§ 3914. The owner of a lost paper, which may according to law

Article 2.—Establishment of Lost Papers in Justices' Court.

Other lost papers may be established by rule.

Rule—how to be served.

be sued on and collected in a Justices' Court, who wishes to establish the same, may present to one of the Justices of the Peace of the district in which the maker resides, if a resident of this State, a copy in substance of the paper lost as nearly as he can recollect, which copy shall be sworn to by the applicant, his agent, or attorney, or be proved by other evidence; whereupon such Justice of the Peace shall issue a rule *ni zi*, calling upon the opposite party to show cause, if any he has, why the copy should not be established in lieu of the original so lost or destroyed; which rule shall be served upon the party personally, if to be found, ten days before the sitting of the Court to which he is called upon to show cause, by any Constable of the State; and if the party is not to be found, then the rule may be published in a public gazette of this State for one month before the final hearing of the rule; and if no sufficient cause be shown, the Justice shall give judgment establishing the copy in lieu of the original so lost or destroyed, and the copy so established shall be certified to by the Justice of the Court in which it was established and shall have all the force and effect of the original.

Alias executions from Justices' Court may issue.

§ 3915. Executions issued from the Justices' Courts of this State, when lost or destroyed, may be supplied by an alias execution, to be issued by the Justice of the Peace under the same rules and regulations as those which prevail in the Superior Court on the subject of issuing alias executions.

Who may be party.

§ 3916. [In all cases pending on the 15th December, 1866, or commenced after that time for the purpose of establishing any lost or destroyed paper (other than an office paper), any person whose interest is to be affected by the establishing such lost papers shall, upon motion, by order of the Court, be made a party defendant to such proceeding, and be allowed all the rights of defense against the same as fully as if he was the maker of said lost paper.] (a)

ARTICLE III.

SUMMARY ESTABLISHMENT OF LOST PAPERS.

SECTION.

3917. Lost papers—how established.

3918. Summary mode disallowed—when.

SECTION.

3919. Cases against non-resident.

Article 3.—Summary Establishment of Lost Papers.

§ 3917. [The owner or legal representative of the owner of any bond, bill, note, draft, check, or other evidence of indebtedness which has been lost or destroyed, may establish a copy thereof by giving personal notice at least ten days previous to the day appointed, which notice shall contain a copy of the paper to be established, and shall be served upon the party against whom said indebtedness is sought to be established, and by making oath before some officer authorized to administer an oath, that he is the owner of such paper, and that the same has been lost or destroyed; a copy thus established with said affidavit attached, may be used in any Court in this State in lieu of the lost original.] (a)

Lost papers
may be es-
tablished—
when.

How.

Copy may
be used.

§ 3918. [If any party who is liable for the payment of said lost paper, in whole or in part, or whose interests are affected by the establishment of said paper, shall make oath that the said paper never existed, or that the same has been paid off or discharged, the party seeking to establish the same in the summary manner provided in this Article, shall be remitted to the remedies provided in Articles I. and II. of this Chapter and Title.] (a)

Oath of par-
ty liable.

Owner re-
mitted to
other reme-
dies.

§ 3919. [In all cases where suit may have been instituted on any bond, bill, note, draft, check, or either evidence of indebtedness, and said suit shall not have gone to the appeal, and the defendant is a non-resident, so that personal service can not be made as provided in Section 3917, such evidence of indebtedness may be established, on motion, as an office paper, upon the plaintiff, his agent or attorney, making oath that the same has been lost or destroyed since the commencement of suit, that it was in his possession when the suit was commenced, and is still unpaid.] (b)

In cases
of non-resi-
dents.

TITLE XV.

OF PROCEEDING TO OBTAIN PARTITION.

CHAPTER 1.—*Partition of Land—how Obtained.*

CHAPTER 2.—*Partition of Personal Property—how Obtained.*

(a) Acts of 1865-6, p. 82. (b) Acts of 1866, pp. 139, 140.

Article 1.—Where, how, and by whom Application must be made.

CHAPTER I.

PARTITION OF LAND—HOW OBTAINED.

ARTICLE 1.—*Where, how, and by whom Application must be made.*

ARTICLE 2.—*Notice to Parties—how given and upon whom served.*

ARTICLE 3.—*Of Issuing, Execution and Return of Writ.*

ARTICLE 4.—*Defenses—how and when made.*

ARTICLE 5.—*Of the Judgment.*

ARTICLE 6.—*Remedy of Parties Absent from the State.*

ARTICLE I.

WHERE, HOW, AND BY WHOM THE APPLICATION FOR PARTITION
MUST BE MADE.

SECTION.

3920. Proceedings to obtain partition.

SECTION.

3921. By whom application may be made

Proceedings
to partition.

§ 3920. In all cases where two or more persons are common owners of lands and tenements in this State, whether by descent, purchase or otherwise, and no provision is made by will or otherwise, as to how such lands and tenements are to be divided, any one of such common owners may apply to the Superior Court of the County in which such lands and tenements are situated for a writ of partition, which application shall be by petition, setting forth plainly and distinctly the facts and circumstances of the case, describing the premises to be partitioned and defining the share and interest of each of the parties therein.

Application
—by whom
made.

§ 3921. If the party desiring the writ of partition be of full age, and free from disability, he may make the application either in person or by his agent, or attorney in fact, or at law, and if the application is for the benefit of a minor, a lunatic, *feme covert* or *cestui que trust*, it may be made by the guardian of such minor or lunatic, by the husband of such *feme covert*, or the trustee of such *cestui que trust*, as the case may be.

Article 2.—Notice to the Parties—how Given and on whom Served.

ARTICLE II.

NOTICE TO THE PARTIES—HOW GIVEN AND ON WHOM SERVED.

SECTION. 3922. Twenty days' notice of the application.

§ 3922. The party applying for the writ of partition shall give ^{Twenty days' notice.} to the other parties concerned at least twenty days' notice of his intention to make application, and if any such other parties concerned be a minor, a lunatic, a *cestui que trust* or *feme covert*, said twenty days' notice may be served on the guardian of such minor or lunatic, or on the trustee of such *cestui que trust*, or on the husband of such *feme covert*, and if any of the parties reside without the limits of this State, the Court may order service by ^{Service by publication.} publication, as in its judgment is right in each case.

ARTICLE III.

OF ISSUING, EXECUTION AND RETURN OF THE WRIT OF PARTITION.

SECTION.

3923. Five partitioners—how appointed.

SECTION.

3924. Power and duty of partitioners.

§ 3923. When the application for partition is made, and when due proof is made that the notice hereinbefore required has been given, the Court shall examine the petitioner's title, and part or share of the premises to be partitioned, and shall thereupon pass an order directing the Clerk of such Court to issue a writ of partition, framed according to the nature of the case, directed to five ^{Five partitioners.} freeholders of the County in which the lands are situated, who shall execute and return the writ as hereinafter provided.

§ 3924. The partitioners, or persons to whom the writ is directed, shall have power to select a surveyor to aid them in the discharge of their duties, and after giving all the parties, if possible, at least eight days' notice of the time of executing the writ, and after being sworn before some officer authorized by law to administer such oath, duly and impartially to execute such writ, the said partitioners, or a majority of them, shall proceed to make a ^{Surveyor to be selected.} just and equal partition and division of all such lands and tenements, either in entire tracts or parcels as they shall judge to be in proportion to the shares claimed, and most beneficial to the several common owners of said lands and tenements; according to the ^{Eight days' notice.} ^{Lands—how divided.}

Article 4.—Defenses—how and when made.

best of their skill, ability and knowledge, and they shall return said writ, with their actings and doings thereon, under their hands and seals, to the said Superior Court within three months after the issuing of said writ, which return shall be filed and kept by the said Clerk until the next term of said Court after the filing of the same.

ARTICLE IV.

DEFENSES—HOW AND WHEN MADE.

SECTION 3925. Defenses—how and when made.

Defenses
—when, by
whom, and
how made.

§ 3925. At the term of the Court when the application is made, or at the term next after the said partitioners have made their return, any of the defendants or persons concerned, against whom or whose right or title a judgment is sought, may file objections to the right of the applicant and the writ of partition, or to the return of the partitioners, and may, by way of defense, show any good and probable matter in bar of the partition asked for, or may show that the demandant has not title to so much as is allowed and awarded to him by the said partitioners, or to any part of the land; whereupon an issue shall be made up and tried by a special jury, as in appeal cases.

ARTICLE V.

OF THE JUDGMENT.

SECTION.

- 3926. The return of the partitioners.
- 3927. If lands can not be divided.
- 3928. Proceeds of sale—how disposed of.

SECTION.

- 3929. Titles to property sold.
- 3930. Cases not provided for.

When re-
turn shall be
made the
judgment.

§ 3926. If no objection be filed by any of the parties to the return of the partitioners, or if, being filed, the jury, on the trial, shall find a verdict against the party setting up such objections, the said return of the partitioners shall be made the judgment of the Court, and shall be final and conclusive as to all the parties concerned who were notified of the application for partition, and of the time of executing the writ, as hereinbefore required, and a writ of possession shall issue accordingly; but if objections to

A new par-
tition may
be awarded.

said returns be filed and sustained by the jury trying the case, or if it shall appear to the Court that there is injustice or inequality

Article 5.—Of the Judgment.

in the division made by the partitioners, said Court shall award a new partition, to be made in the presence of the parties concerned (if they will appear); which second partition, when returned, shall be firm, good, and conclusive forever against all parties notified as aforesaid.

§ 3927. Whenever application is made for partition of lands and tenements, as hereinbefore provided for, and either of the parties in interest shall make it satisfactorily appear to the Court that a fair and equitable division of the lands and tenements can not be made by means of metes and bounds, by reason of improvements made thereon, or by reason of the premises being valuable for mining purposes, or for the erection of mills or other machinery, or that the value of the entire lands and tenements will be depreciated by the partition applied for, then and in that case the Court shall order a sale of such lands and tenements, and shall appoint three discreet persons to conduct such sale under such regulations and upon such just and equitable terms as said Court may prescribe; which sale shall take place on the first Tuesday in the month, at the Court House of the County in which the land is situated, after an advertisement of such sale in some public gazette of this State for at least thirty days.

If lands can not be divided, they must be sold.
Three superintendents of sale.
Thirty days' notice.

§ 3928. After the sale of any lands and tenements, as provided for in the preceding Section, the commissioners conducting the sale shall return their proceedings to the next term of the Court ordering such sale, at which term the said Court shall order the proceeds of the sale to be divided among the several claimants ratably in proportion to their respective interests after deducting the expenses of the proceedings.

Proceeds of sale—how disposed of.

§ 3929. Upon the sale of lands and tenements as aforesaid, the parties in interest shall execute a title to the purchaser, and if any of them fail or refuse to do so, the said commissioners, so appointed as aforesaid, or any two of them, shall execute a deed of conveyance to said lands and tenements to the purchaser at such sale, which deed shall be valid and binding in law and equity as if made by the parties themselves.

Title to property sold.

§ 3930. In any extraordinary case, not covered by the foregoing provisions, the Court may frame its proceeding and order so as to meet the exigency of the case without forcing the parties into a Court of Equity, and the Court may deny a sale or partition altogether, if it is manifest that the interest of each party will not be fully protected.

Cases not provided for.

Article 6.—Remedy of Party Absent, etc.

ARTICLE VI.

REMEDY OF PARTY ABSENT, UNDER DISABILITY, OR NOT NOTIFIED.

SECTION 3931. Parties laboring under disabilities.

§ 3931. When proceedings have been instituted, and judgment of partition had thereon, according to the regulations prescribed in this Code, and any one of the parties in interest is a minor, or a lunatic who has no guardian, or is absent from the State during such proceeding, or has not been notified thereof, such minor or lunatic may, within twelve months after coming of age, or restoration of mind, or having a guardian appointed; and such absent or unnotified party may, at any time within twelve months after rendition of the judgment, move the Court to set aside such judgment on any of the grounds upon which a party notified and free from disabilities might have resisted the judgment upon the hearing, as hereinbefore authorized, and the issue shall be tried, and the subsequent proceedings shall be the same as pointed out in cases of objections filed to the return of the partitioners before judgment; and if such motion to set aside the judgment be not made within the time aforesaid, such judgment shall be as binding and conclusive upon such minor, lunatic, absent, or unnotified party, as if he had been notified, present, or free from disability. But in no event shall such subsequent proceedings affect the title of a *bona fide* purchaser under a sale ordered by the Court.

When motion to vacate may be made.

The right of third persons protected.

CHAPTER II.

PARTITION OF PERSONAL PROPERTY—HOW OBTAINED.

SECTION 3932. Personal property may be partitioned.

§ 3932. Application may be made, and partition of personal property may be obtained, in the same manner and under the same regulations as are prescribed in this Code for obtaining partition of lands and tenements.

Personal property may be partitioned.

TITLE XVI.

PROCEEDINGS ON APPLICATION FOR HABEAS CORPUS.

CHAPTER I.

PROCEEDINGS ON APPLICATION FOR HABEAS CORPUS.

SECTION.

- 3933. *Habeas corpus*, etc., may issue.
- 3934. Application—how made, etc.
- 3935. How verified, and to whom made.
- 3936. When the writ must be granted.
- 3937. Form of the writ.
- 3938. Return day of the writ.
- 3939. Service of the writ.
- 3940. Arrest of the party detained.
- 3941. What time return must be made.
- 3942. Return sworn to—produc'n of body.
- 3943. Process must be produced.
- 3944. Return must state the transfer, etc.

SECTION.

- 3945. Return may be traversed.
- 3946. Attachment for disobedience.
- 3947. When party can not be discharged.
- 3948. Wife and child may be disposed of.
- 3949. Defect in warrant, etc.
- 3950. Powers of the Court in other cases.
- 3951. Imprisoned witnesses, etc.
- 3952. Discretion of Court as to costs.
- 3953. Proceedings to be recorded.
- 3954. Notice of the hearing.
- 3955. Forfeiture for refusing writ.

§ 3933. Any person restrained of his liberty, under any pretext whatever, in this State, or any person alleging that another in whom for any cause he is interested is restrained of his liberty, or kept illegally from the custody of the applicant, may sue out a writ of *habeas corpus*, to inquire into the legality of such restraint. And this right shall be suspended or denied only in times of existing war, and then only as to such persons as shall be in military confinement.

When writ
of *habeas*
corpus may
issue.

§ 3934. The application for the writ shall be by petition in writing, signed by the applicant, his attorney, or agent, or some other person in his behalf, and shall state—

Application
—how made
and what to
contain.

1. The name or description of the person whose liberty is restrained.

2. The person restraining, the mode of restraint, and the place of detention, as nearly as practicable.

3. The cause or pretence of such restraint, and if under pretext of legal process, a copy of such process, if within the power of the applicant, must be annexed to the petition.

4. A distinct averment of the alleged illegality in the restraint, or other reason why the writ of *habeas corpus* is sought.

5. A prayer for the writ of *habeas corpus*.

§ 3935. Such petition must be verified by the oath of the appli-

Chapter 1.—Proceedings on Application for Habeas Corpus.

Application
—how veri-
fied and to
whom pre-
sented.

cant, or some other person in his behalf, and may be presented to the County Judge where the alleged illegal detention exists. But if the applicant sees proper, he may make the application to the Judge of the Superior Court of the Circuit, who may order the party restrained of his liberty to be brought before him, from any County in his Circuit.

When the
writ must be
granted.

§ 3936. If upon examination of such petition it shall not appear to such Judge that such restraint of liberty is legal, he shall grant the writ of *habeas corpus*, requiring the person thus restraining the liberty of another, or illegally detaining another in his custody, to bring such person before him, at a time and place to be specified in the writ, for the purpose of an examination into the cause of such detention.

Form of
the writ.

§ 3937. The writ of *habeas corpus* may be substantially as follows—that is to say:

STATE OF GEORGIA, } To A. B.:
——— COUNTY. }

“You are hereby commanded to produce the body of C. D., alleged to be illegally detained by you, together with the cause of such detention, before me, on the —— day of ——, at ——, then and there to be disposed of as the law directs.”

“Given under my hand and official signature, this the —— day of ——.

(Signed) E. F.

Return day
of the writ.

§ 3938. The return day of such writ shall always be within twenty days after the presentation of the petition therefor.

How and
by whom the
writ may be
served.

§ 3939. Such writ shall be served, by delivering a copy of the same, by any officer authorized to make a return of any process, or by any other citizen; and the entry of such officer, or the affidavit of such citizen, shall be sufficient evidence of such service. The person serving the writ shall exhibit the original if required so to do. If personal service can not be effected, the writ may be served by leaving a copy at the house, jail, or other place in which the party in whose behalf the writ issues is detained.

When and
how the par-
ty detained
may be ar-
rested.

§ 3940. If with the petition there shall be filed the affidavit of the applicant, that he has reason to apprehend that the party detaining or holding the other in custody will remove him beyond the limits of the County, or conceal him from the officers of the law, such Judge granting the writ shall at the same time issue his precept, directed to the Sheriff, deputy Sheriff, Coroner, or any law-

Chapter 1.—Proceedings on Application for Habeas Corpus.

ful Constable of the County, requiring them to search for and arrest the body of the person detained, and bring him before such Judge, to be disposed of as he may direct.

§ 3941. The return of the party served with the writ shall be made at the time and place specified; *provided*, two days from the time of service shall be allowed for every twenty miles which such party has to travel from the place of detention to the place appointed for the hearing; and if the service has not been made a sufficient time before the hearing to cover the time allowed in this Section to reach the place of hearing, such return shall be made within the time so allowed, immediately after the service.

Within what time the return to the writ must be made.

§ 3942. Every return to a writ of *habeas corpus* shall be under oath; and if the custody or detention of the party in whose behalf the writ issues be admitted, his body shall be produced, unless prevented by providential cause, or prohibited by the law of the land.

Return to be under oath, etc.

§ 3943. In every case where the detention is justified under legal process, such legal process shall be produced and submitted to the Judge at the hearing of the return.

When process must be produced.

§ 3944. If the return denies the custody or detention of the party, it shall further state, distinctly, the latest date at which the custody was had, and when and to whom transferred; and if it shall appear that such transfer of custody was made to avoid the writ of *habeas corpus*, the party making the return may be imprisoned, in the discretion of the Judge hearing the same, until the body of the party kept or detained shall be produced.

Transfer of custody must be stated in return.

§ 3945. If the return denies any of the material facts stated in the petition, or alleges others upon which issue is taken, the Judge hearing the return may, in a summary manner, hear testimony as to such issue, and to that end may compel the attendance of witnesses, the production of papers, or may adjourn the examination of the question, or exercise any other power of a Court which the principles of justice may require.

Return traversed.

§ 3946. Any person disregarding the writ of *habeas corpus* in any manner whatever, shall be liable to attachment for contempt, issued by the Judge granting the writ, under which attachment such person may be imprisoned until he shall comply with the legal requirements of the writ.

Disobedience of the writ—how punished.

§ 3947. No person shall be discharged upon the hearing of a writ of *habeas corpus* in the following cases, to wit:

When a party can not be discharged.

Chapter 1.—Proceedings on Application for Habeas Corpus.

1. Where he is imprisoned under lawful process, issued from a Court of competent jurisdiction, unless in cases where bail is allowed and proper bail is tendered.

2. When the return is heard by the Judge of the County Court, and the party is imprisoned under final process, or order issued from the Superior Court.

3. In no case on account of non-payment of jail fees, unless the application is made by the person to whom the fees are due, and at least ten days' notice has been given to the person from whom the fees are due, his agent or attorney, prior to the application for the writ.

4. By reason of any irregularity in the warrant or commitment, where the same substantially conforms to the requirements of this Code, nor for want of bond to prosecute.

5. Where the party is imprisoned under a bench warrant regular upon its face.

6. By reason of any misnomer in the warrant or commitment, where the Court is satisfied that the party detained is the party charged with the offense.

7. Where the party is in custody for a contempt of Court, and the Court has not exceeded its jurisdiction in the length of the imprisonment imposed.

8. In no other case where it appears that the detention is authorized by law.

§ 3948. In all writs of *habeas corpus* sued out on account of the detention of a wife or child, the Court, on hearing all the facts, may exercise its discretion as to whom the custody of such wife or child shall be given, and shall have power to give such custody of a child to a third person.

§ 3949. If the party is detained upon a criminal charge, and it appears to the Court that there is probable cause for his detention, he shall not be discharged for any defect in the affidavit, warrant, or commitment, until a reasonable time has been given to the prosecutor to remedy the defect by a new proceeding, if the charge is for an offense committed in another State, and he is arrested on suspicion, he shall not be discharged, if the suspicion is reasonable, until a sufficient time be given for a demand to be made on the Governor for his rendition.

§ 3950. In all other cases, the Judge hearing the return shall discharge, remand, or admit the party to bail, or deliver him to the

How wife or
child may be
disposed of.

No dis-
charge for
defect in
proceedings.

Chapter 1.—Proceedings on Application for Habeas Corpus.

custody of the officer or person entitled thereto, as the principles of law and justice may require. Powers of Court in other cases.

§ 3951. Any Judge of the Superior Court may issue his order, to any officer having any person in his custody lawfully imprisoned, to produce such person before his Court for the purpose of giving evidence in any criminal cause pending therein, without any formal application or writ of *habeas corpus* for that purpose. How imprisoned witnesses may be brought up.

§ 3952. The Judge hearing the return to a writ of *habeas corpus* may, in his discretion, award the costs of the proceeding against either party, and may order execution to issue therefor by the Clerk. Costs.

§ 3953. The proceedings in all cases of *habeas corpus* shall be returned to the Clerk of the Superior or County Court of the County whose Judge may have heard the same, and shall be by such Clerk recorded, as in other cases, for which he shall receive the like fees as in other cases recorded by him. Proceedings must be recorded.

§ 3954. If the person is detained upon a criminal charge, and the Solicitor General is in the County, he shall be notified of the hearing; if he is not, the notice shall be given to the prosecutor. Notice of the hearing.

§ 3955. [When any person shall apply for a writ of *habeas corpus* to any Judge whose duty it is to grant said writ, and the same is refused, the Judge so refusing to grant said writ shall forfeit to the party aggrieved the sum of twenty-five hundred dollars, to be recovered in any Court of law in this State having jurisdiction of the same.] (a) Penalty for refusing writ

TITLE XVII.

POSSESSORY WARRANTS AND PROCEEDINGS THEREON.

CHAPTER I.

POSSESSORY WARRANTS AND THE PROCEEDINGS THEREON.

ARTICLE 1.—*By whom and on what Grounds Warrants may Issue.*

ARTICLE 2.—*How the Warrant must be Executed and Returned.*

ARTICLE 3.—*The Trial, Judgment, and Subsequent Proceedings.*

Article 1.—By whom and on what Grounds Warrant may Issue.

ARTICLE I. 36 Ga 93

BY WHOM AND ON WHAT GROUNDS THE WARRANT MAY ISSUE.

SECTION 3956. Who may issue—grounds of.

Possessory
warrant—by
whom and
on what
grounds is-
sued.

§ 3956. Upon complaint being made on oath by the party injured, his agent, or attorney in fact, or at law, to any Judge of the Superior, Judge of the County Court, or Justice of the Peace of the County in which the property in controversy may be, that any personal chattel has been taken, enticed, or carried away, either by fraud, violence, seduction, or other means from the possession of the party complaining, or that such personal chattel, having recently been in the quiet, peaceable, and legally acquired possession of such complaining party, has disappeared without his consent, and, as he believes, has been received, or taken possession of, by the party complained against, under some pretended claim, and without lawful warrant or authority, and that the party complaining does in good faith claim a title to or interest in the personal chattel, or the possession thereof, it shall be the duty of such Judge or Justice to issue a warrant, as well for the apprehension of the party against whom the complaint is made as for the seizure of the property in controversy, which warrant shall be directed to the Sheriff, his deputy, or any lawful Constable of the County aforesaid.

How di-
rected.

ARTICLE II.

HOW THE WARRANT MUST BE EXECUTED AND RETURNED.

SECTION 3957. Warrant—how executed.

Warrant—
how execu-
ted.

§ 3957. The officer in whose hands the possessory warrant is placed shall forthwith proceed to apprehend and arrest the body of the defendant, or party against whom the warrant is issued, and also to seize the property described in the warrant, if the same are to be found in his County, and carry the said defendant and said property, together with the warrant, before the Judge or Justice issuing the same, or before any other Judge or Justice of said County.

Article 3.—The Trial, Judgment, and Subsequent Proceedings.

ARTICLE III.

THE TRIAL, JUDGMENT, AND SUBSEQUENT PROCEEDINGS.

SECTION.

3958. Hearing—continuance.
3959. Issue—judgments, etc.
3960. Bonds—where returned.

SECTION.

3961. Imprisonment of defendant.
3962. *Certiorari* and trial thereon.
3963. Judgment on *certiorari*.

§ 3958. The Judge or Justice before whom a warrant for the Trial.
restoration of personal property may be returned shall, if the par-
ties are ready, proceed with the hearing forthwith; but if either Continuance
of the parties are not ready, the hearing shall be postponed to
some subsequent time to be fixed by the said Judge or Justice, so
as to allow the parties a reasonable opportunity to procure their
testimony, and at the same time to insure a trial with as little de-
lay as possible.

§ 3959. When the day set apart for the trial arrives, the Judge Possession
or Justice shall proceed to hear evidence as to the question of the only is-
possession in a summary way, without investigating the title to sue to be
the property, and shall cause the property to be delivered to the tried.
party from whose possession the same was violently or fraudulent- Judgment.
ly taken or enticed away, or from whom the same absconded, or 366m 000
in whose peaceable and lawful possession it last was; *provided*, such 374a 98
party shall then and there enter into a recognizance, with good Bond of
and sufficient security, in double the amount of the value of such the success-
property, and the hire claimed, if any, to cause the said property to ful party.
be produced and forthcoming to answer any judgment, execution or 1869
decree that may be had, issued or made upon such suit or action, 15,
at law or in equity, as the opposite party may commence or pros-
ecute within the next four years touching the same; *provided*, If plaintiff
also, that when the party taking out the warrant shall refuse or fails to give
fail to give such security, then the Judge or Justice may, in his bond prop-
discretion, deliver over the property to the opposite party upon erty may be
his entering into a like recognizance, with security of the same delivered to
nature and effect. defendant on
his giving
bond.

§ 3960. The Judge or Justice shall return any recognizance Bond—
taken as provided in the preceding Section to the next Superior where re-
Court of the County where the same is taken, to be transmitted. turned.
to the Court where any suit or action may be commenced touching
said property, and the securities on such recognizance shall be
bound and liable for the eventual condemnation money in such

Article 3.—The Trial, Judgment, and Subsequent Proceedings.

suit or action, and execution shall issue against them in the same manner as against security on appeals.

Defendant
may be im-
prisoned—
when.

§ 3961. Upon the return of a possessory warrant, if it shall appear that the officer can not find, or was unable to seize the property described in the warrant, and that such property is in the possession, power, custody, or control of the defendant, or any agent or friend of his, or any one acting for or intrusted with the same for him, and the said defendant doth not produce or cause said property to be forthcoming to be dealt with as the law directs, and as the judgment of the said Judge or Justice awards, the said defendant shall be committed to jail, there to remain in safe and close custody without bail or main-prize until such property shall be produced or forthcoming, to be disposed of as aforesaid; *provided, always*, that no person shall be so committed to jail for such failure to produce property if he can satisfactorily prove to the Judge or Justice trying the case, that such property has been in his quiet and peaceable possession for four years next immediately preceding the issuing of said warrant, but upon such proof being made, the warrant shall be dismissed; *and provided, further*, that no person shall be imprisoned as aforesaid pending an application for a *certiorari* before the Superior Court, who shall give bond and security to abide by the final decision of the cause.

Proviso.

Certiorari
lies to judg-
ment on
a possessory
warrant.

§ 3962. The writ of *certiorari* lies to every decision of a Court upon a possessory warrant, to be sued out as in other cases; *and* upon the hearing of such writ in the Superior Court, if the liberty of the party is endangered by the decision of the Court below, he may demand a trial before a jury impaneled as in criminal cases, upon the issue of fact as to the alleged property being in his possession, power, custody, or control, or that of his agent, friend, or any other person for him, and the verdict of such jury shall be conclusive on the question.

Judgment
on the cer-
tiorari.

§ 3963. Upon hearing the *certiorari* the Judge may remand the case or give final judgment and direction therein as he may see fit.

TITLE XVIII.

OF PROCEEDINGS ON TRIAL OF CITIZENSHIP.

CHAPTER I.

OF THE PROCEEDINGS ON THE TRIAL OF CITIZENSHIP.

SECTION.

3964. Citizenship—how disputed.

3965. Any citizen may be made party.

3966. Trial and judgment.

SECTION.

3967. Evidence of the plaintiff.

3968. Damages—when given to defendant.

§ 3964. Every citizen of this State, of full age and laboring under no disability, has the right to dispute and have investigated by process of law, the claim to citizenship set up by any other person in the following manner—to wit: He shall file his petition in the Superior Court of the County, against any person resident thereof, who may claim to exercise and enjoy the rights and privileges of a free white citizen of this State, in which he shall distinctly allege that such person so claiming to exercise and enjoy the rights and privileges aforesaid, is of mixed blood, and not a free white citizen, to which the Clerk of said Court shall annex a process, and a copy thereof shall be served on the defendant, in the manner as now provided for in cases on the common law side of said Court; *provided*, that before filing such petition, the person filing the same shall make oath that the facts set forth in such petition are true, according to the best of his knowledge and belief.

Claim to
citizenship
may be
disputed.

Allegation.

Process
service.

Oath.

§ 3965. Pending any suit as provided in the preceding Section, it shall be lawful for any white citizen to make himself a party thereto, and prosecute the same, subject to all the liabilities, as though he had commenced such suit.

Parties.

§ 3966. All suits instituted as provided in this Chapter shall be tried by a special jury at the first term of the Court to which the same may be returnable, unless continued as provided by this Code in cases of appeal; and final judgment shall not be rendered, either for or against the defendant, until there shall be two concurring verdicts, as in cases of divorce, as provided by this Code; and the final judgment so rendered shall be deemed and

Trial by
special jury.Must be
two concur-
rent verdicts

Chapter 1.—Proceedings to Obtain Dower.

held by all the Courts of this State as conclusive upon the rights and privileges of said defendant.

Evidence. § 3967. On the trial of any suit instituted by the authority of this Chapter, it shall be lawful for the plaintiff to prove that the defendant has one-eighth of negro or African blood in his or her veins.

Damages for defendant. § 3968. Upon the trial of the case, as hereinbefore provided, if the jury should be of opinion, from the evidence, that the proceeding is malicious and without probable cause, they may find in favor of the defendant, against the plaintiff, such damages as they may deem reasonable and just, under all the circumstances of the case; and should they so find, one verdict shall be sufficient, and said defendant may enter judgment and have execution thereon, as in other cases at law.

One verdict sufficient.

TITLE XIX.

PROCEEDINGS TO OBTAIN DOWER.

CHAPTER I.

PROCEEDINGS TO OBTAIN DOWER.

SECTION.

3969. Appointment of commissioners.
3970. Application—when to be made.
3971. Notice of application.
3972. Oath of commissioners.

SECTION.

3973. May employ surveyor.
3974. Traverse of return and trial of issue.
3975. Finding and its effect.
3976. Final judgment.

Appointment of commissioners. § 3969. [The Superior Courts of this State shall have power and authority, upon the written application of any person entitled to dower in any lands and tenements in this State, to appoint five fit and discreet freeholders of the County in which the application is made, and cause the Clerk of the Court to issue a writ for that purpose, directing said freeholders, or a majority of them, to enter upon such lands and tenements, and to admeasure, lay off, and assign the dower to which the applicant is entitled by law in such lands, having regard to the shape and valuation of the same, *provided* such lands shall be without the limits of any city, town,

Their duty.

Chapter 1.—Proceedings to Obtain Dower.

village, or place of public business; and of all lands within a city, town, village, or place of public business, said freeholders, or a majority of them, may lay off and assign one-third part of the lands and tenements to which the applicant is entitled, according to quantity and valuation, as they may think proper, just, and equitable.] (a)

§ 3970. [The application for dower shall not be made until after the expiration of three months from the death of the person to whom said lands and tenements belonged.] (a)

Application
--when made

§ 3971. [The applicant shall give written notice to the representative of such estate, or if *she* be the representative, then to the person or persons interested, ten days, if they reside in this State, or if they reside without the State, two months' notice in some public gazette of this State, of such intended application for such assignment of dower.] (a)

Notice in
writing.

§ 3972. [The persons appointed to lay off dower as aforesaid shall take the following oath, to be administered by an officer authorized to administer oaths, or before one of their number, he first swearing before the rest: "I do solemnly swear that I will duly and impartially execute the laws, to the best of my understanding. So help me God."] (a)

Oath of com-
missioners.

§ 3973. [The commissioners so appointed shall have power to procure the aid of the County Surveyor of the County, or other competent surveyor of an adjoining County, in making the survey and admeasurement of dower, who shall be required to make a careful plat of such survey of dower, which shall be recorded with the return of the commissioners. The commissioners shall make return of their proceeding to the succeeding term of the Court after their appointment.] (a)

May employ
Surveyor.

§ 3974. [When the return of the commissioners is made, it shall be the right of every person interested to enter a traverse in writing, plainly stating the grounds upon which it is made; in which case it shall be the duty of the Court to cause an issue to be made up, which shall be tried by a special jury at the same term of the Court, unless good cause be shown for a continuance, which shall be granted for one term, and no longer.] (a)

Traverse
of return,
etc.

§ 3975. [If such issue be formed, and the jury find in favor of the return, then the return of the commissioners shall be confirm-

Finding and
its effect.

Article 1.—In what Cases the Writ of Certiorari Lies.

ed and made the judgment of the Court; but if the issue be found against the return of the commissioners, then the Court shall order a new writ to be issued to other commissioners named, requiring them to make the admeasurement and assignment, and make return thereof to the next term of the Court.] (a)

§ 3976. [When the return of the commissioners is made the final judgment of the Court, it shall be conclusive between all parties interested, and the Clerk shall issue writs of possession in favor of the applicant, and judgment shall be entered against the representative of the estate of the deceased husband for all costs, including two dollars per day each for the commissioners.] (a)

Return of
commission-
ers.

Costs.

TITLE XX.

OF THE WRIT OF CERTIORARI.

CHAPTER I.

OF THE WRIT OF CERTIORARI.

ARTICLE 1.—*In what Cases the Writ of Certiorari Lies.*

ARTICLE 2.—*How Obtained, and Proceedings thereon.*

ARTICLE 3.—*Of the Answer, Hearing, Judgment, and Costs.*

ARTICLE I.

IN WHAT CASES THE WRIT OF CERTIORARI LIES.

SECTION 3977. When a writ of *certiorari* will lie.

§ 3977. The writ of *certiorari* will lie for the correction of errors committed by the Inferior Court, or the Justices thereof, Justices of the Peace, Corporation Courts, or Councils, or any inferior judicatory, or any person exercising judicial powers, including the Ordinary, except in cases touching the probate of wills, granting letters testamentary and of administration.*

When a *cer-*
tiorari will
lie.

(a) Acts of 1862-3, p. 160, 161.

* As to *certiorari* from County Court, see Sections 297-8.

Article 2.—How Obtained, and Proceedings thereon.

ARTICLE II.

HOW OBTAINED, AND PROCEEDINGS THEREON.

SECTION.

3978. To the Inferior or Court of Ordinary
 3979. Judge may grant out of his Circuit.
 3980. Other inferior judicatories.
 3981. Affidavit to petition.
 3982. Bond and security must be given, etc
 3983. Security compelled to justify.

SECTION.

3984. Affidavit in lieu of bonds and costs.
 3985. Must be applied for in three months.
 3986. Docketed fifteen days, etc.
 3987. Ten days' notice to adverse party.
 3988. Shall operate as a supersedeas.

§ 3978. When either party in any cause in any Inferior Court, or Court of Ordinary, shall take exceptions to any proceeding or decision in any cause, affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself or his attorney, and if the same shall be overruled by the Court, such party may petition the Judge of the Superior Court for a writ of *certiorari*, in which petition he shall plainly, fully, and distinctly set forth the errors complained of; and if such Judge shall deem the objections to be sufficient, he shall forthwith issue a writ of *certiorari*, directed to the Clerk of such Inferior Court, or to the Ordinary, requiring him to certify and send up to the Superior Court, at the time specified in said writ, all the proceedings in said cause.

From the Inferior or Court of Ordinary.

§ 3979. No Judge of the Superior Court shall grant or issue any writ of *certiorari* out of his Judicial Circuit, unless there shall be a vacancy in any of the other Circuits, or the Judge thereof be indisposed, or be absent therefrom, so that the business of granting *certioraries* can not be speedily done.

When Judge may grant out of his Circuit.

§ 3980. When either party in any cause in a Justices' Court, Corporation Court, Council, or any inferior judicatory, or before any person exercising judicial powers, shall be dissatisfied with the decision or judgment in such cause, such party may apply for and obtain a writ of *certiorari* by petition to the Superior Court, in which petition he shall plainly and distinctly set forth the errors complained of. And on such petition being filed in the office of the Clerk of the Superior Court, together with the bond or affidavit as hereinafter provided, it shall be the duty of such Clerk to issue a writ of *certiorari*, directed to the Justice of the Peace of the district where the decision complained of was made, or other tribunal or person whose decision or judgment is the subject matter of complaint, requiring such Justice of the Peace, or other

For Justices and other inferior judicatories.

Must be sanctioned by Judge.

Shall be issued by Clerk.

How directed.

Article 2.—How Obtained, and Proceedings thereon.

tribunal, or person, to certify and send up all the proceedings in said cause to the Superior Court as directed in said writ of *certiorari*. ...

§ 3981. No writ of *certiorari* shall be granted or issued (except to the Inferior Court or Court of Ordinary), unless the party applying for the same, his agent, or attorney, shall make and file with his petition the following affidavit—to wit:

Affidavit
to be made.

GEORGIA, }
— COUNTY. }

Form of.

I, A. B., do solemnly swear that the petition for *certiorari* is not filed in the case for the purpose of delay only; and I verily believe I have good cause for *certiorari*, and that the facts stated in the foregoing petition, so far as they come within my own knowledge, are true, and, so far as derived from the knowledge of others, I believe them to be true.

Sworn to and subscribed before me, this — day of —, 18—.

Bond and
security to
be given.

§ 3982. Before any writ of *certiorari* shall issue (except as hereinafter provided), the party applying for the same, his agent, or attorney, shall give bond and good security, conditioned to pay the adverse party in the cause the eventual condemnation money, together with all future costs, and shall also produce a certificate from the Clerk of the Inferior Court, or the officer whose decision or judgment is the subject-matter of complaint, that all costs which may have accrued on the trial below have been paid; which bond and certificate shall be filed with the petition for *certiorari*, and the security on said bond shall be liable as securities on appeal.

Costs must
be paid, etc.

Security
may be made
to justify.

§ 3983. The party authorized to take said bond and security may compel the security tendered to justify upon oath, and such justification shall exonerate the party taking the same from any liability.

Affidavit
in lieu of
bond.

§ 3984. If the party applying for the writ of *certiorari* will make and file with his petition an affidavit, in writing, that he is advised, and believes that he has good cause for *certioraring* the proceedings to the Superior Court, and that, owing to his poverty, he is unable to pay the cost and give security, as required in the preceding Section, such affidavit shall, in every respect, answer instead of the certificate and bond above mentioned.

Article 2.—How Obtained, and Proceedings thereon.

§ 3985. All writs of *certiorari* shall be applied for within three months after the final determination of the case in which the error is alleged to have been committed, and not after; and shall be made returnable to the next Superior Court after the issuing of the same, unless said Superior Court shall sit within twenty days after the issuing of said writ—in which case, said writ shall be made returnable to the next succeeding Court.

Must be applied for in three months.

Returnable to next term.

§ 3986. When the foregoing provisions have been complied with, and the writ of *certiorari* shall have been issued, the Clerk of the Superior Court shall place the same on the *certiorari* docket; which writ, together with the petition, shall be delivered to the party to whom it is directed by the party applying for the *certiorari*, his agent, or attorney, or the Sheriff, Deputy Sheriff, or any Constable, at least fifteen days previous to the Court to which the return is to be made.

Must be served fifteen days.

May be served by party.

§ 3987. The plaintiff in *certiorari* shall cause written notice to be given to the opposite party in interest, his agent, or attorney, of the sanction of the writ of *certiorari*, and also the time and place of hearing, at least ten days before the sitting of the Court to which the same shall be returnable; and in default of such notice (unless prevented by unavidable cause), the *certiorari* shall be dismissed.

Ten days' notice to the adverse party.

§ 3988. The writ of *certiorari*, when granted, shall operate as a *supersedeas* of the judgment until the final hearing in the Superior Court.

Shall operate as a *supersedeas*.

ARTICLE III.

OF THE ANSWER, HEARING, JUDGMENT, AND COSTS.

SECTION 1.—*Of the Answer.*

SECTION 2.—*Of the Hearing.*

SECTION 3.—*Of the Judgment and Costs.*

SECTION I.

OF THE ANSWER.

SECTION.

3989. Answer filed on first day.

3990. Exceptions must be in writing.

SECTION.

3991. Not written by interested party.

Section 2.—Of the Hearing.

§ 3989. The answer to the writ of *certiorari* shall be filed on the first day of the term to which it is returnable, unless further time be given, and shall reply specifically to the allegations in the petition.

Answer filed
on first day
of term.

§ 3990. Exceptions to the answer shall be filed in writing, specifying the defects, and notice thereof given to the opposite party before the case is called in its order for hearing; and if such exceptions be sustained, the answer shall be perfected, as directed by the Court.

Exceptions
to answer.

How per-
fected.

§ 3991. The answer shall not be written or dictated by either of the parties, or their attorneys, or any other person interested in the cause, and if made after the party making the same has retired from office, it shall be verified by affidavit.

Must not
be written
by party in-
terested.

SECTION II.

OF THE HEARING.

SECTION.

3992. Stands for trial—first term.

3993. Errors must be set forth.

SECTION.

3994. Answer may be traversed.

§ 3992. *Certiorari* causes shall stand for trial at the return term, and the Judge shall take up the docket and dispose of the same in its order unless continued for good cause.

Stands for
trial at first
term.

§ 3993. No ground of error shall be insisted upon on the hearing, which is not distinctly set forth in the petition.

Errors must
be set forth.

§ 3994. The plaintiff in *certiorari* may, at the first term, and before the hearing, traverse the truth of the answer or return, which traverse shall be in writing, specifying the portion of the answer or return intended to be controverted, and verified by affidavit, and the issue formed upon such traverse shall be tried by a special jury at the same term, unless good cause is shown for a continuance, and their verdict shall be final as to the facts, upon which the Court shall pronounce the law.

Answer may
be traversed
at first term.

Tried by
special jury.

SECTION III.

OF THE JUDGMENT AND COSTS.

SECTION.

3995. May be dismissed or returned.

3996. Where Justice dies.

3997. Damages may be awarded.

SECTION.

3998. Of the judgment for plaintiff.

3999. Of the judgment for defendant.

Section 3.—Of the Judgment and Costs.

§ 3995. Upon the hearing of the writ of *certiorari* the Superior Court may order the same to be dismissed, or return the same to the Court from which it came, with instructions, and in all cases when the error complained of is an error in law which must finally govern the case, and the Court shall be satisfied there is no question of fact involved, which makes it necessary to send the case back for a new hearing before the tribunal below, it shall be the duty of the said Judge to make a final decision in said case without sending it back to the tribunal below.

Certiorari may be dismissed or returned.

Final judgment may be given.

§ 3996. [In all cases now pending, or which may be hereafter pending, in the Superior Courts of this State, upon *certiorari* from any Justices' Court, and the Justice or Justices before whom the case was tried, may have died before answering the writ of *certiorari* served, then it shall be the duty of the presiding Judge forthwith to order a new trial to be had upon the case in the Court below.] (a)

Certiorari when Justice dies.

§ 3997. The presiding Judge before whom any writ of *certiorari* may be heard, on motion of the opposite party, may order that damages, not more than twenty per cent., be recovered by the defendant against the plaintiff in *certiorari* and his security, in case it shall be made to appear that the said *certiorari* was frivolous, and applied for without good cause, or for the purpose of delay only, and judgment may be entered up and execution issued accordingly.

Damage may be awarded.

§ 3998. If, on the hearing, the *certiorari* shall be sustained, and a final decision thereon shall be made by the Superior Court, the plaintiff may sign up judgment for the amount by him recovered in the Court below, and the costs paid to obtain the *certiorari*, and also the costs in said Superior Court; but if the *certiorari* shall be returned to the Court below for a new hearing, the plaintiff shall sign up judgment for the costs in said Superior Court only, leaving the costs paid to obtain the *certiorari* to abide the final trial below.

If the certiorari is sustained, judgment for plaintiff.

§ 3999. If the *certiorari* shall be dismissed, and a final decision made in the cause by the Superior Court, the defendant in *certiorari* may sign up judgment in said Superior Court against the plaintiff and his security for the sum recovered by him, together with the costs in said Superior Court; and if said case be sent

If the certiorari is dismissed judgment for defendant.

Article 1.—Proceedings Against Intruders.

back to the Court below, and there be a judgment in said case in favor of said defendant in the Court below, the security on the *certiorari* bond shall then be included as in case of security on appeal.

TITLE XXI.

PROCEEDINGS AGAINST TRESPASSERS ON LAND AND TENANTS HOLDING OVER.

CHAPTER 1.—*Proceedings Against Intruders, etc.*

CHAPTER 2.—*Forcible Entry and Detainer.*

CHAPTER I.

PROCEEDINGS AGAINST INTRUDERS ON LAND AND TENANTS HOLDING OVER.

ARTICLE 1.—*Proceedings Against Intruders.*

ARTICLE 2.—*Proceedings Against Tenants.*

ARTICLE I.

PROCEEDINGS AGAINST INTRUDERS.

SECTION.

4000. Affidavit of land owner.

4001. Intruders may make a counter aff't.

4002. How issue shall be tried.

SECTION.

4003. A writ of possession shall issue.

4004. Intruders on camp grounds.

§ 4000. Intruders may be ejected from the possession of lands and tenements in the following manner—to-wit: When any person, either by himself, his agent, or attorney in fact, shall take and subscribe an affidavit in writing, before any officer authorized to administer an oath, setting forth that he does in good faith claim the right of possession to any land or tenement (describing the same), and that such land or tenement is in the hands of another person (naming the person), who does not in good faith claim a right to such possession, and yet refuses to abandon the

Claimant
may make
oath and de-
liver affida-
vit to Sher-
iff.

Article 1.—Proceedings Against Intruders.

same; and when such affidavit shall be placed in the hands of the Sheriff of the County where the land or tenement is situated, it shall be the duty of such Sheriff, at the earliest practicable day, to exhibit such affidavit to the person described as being in possession of such land or tenement, and to turn such person out of possession, unless the person so in possession shall at once tender to the Sheriff a counter affidavit, stating that he does in good faith claim a legal right to the possession of said land or tenement.

Proceedings
of Sheriff.

§ 4001. The Sheriff shall be a competent officer to administer the oath to the person in possession, in case he tenders the counter affidavit provided for in the preceding Section.

Sheriff must
administer
oath.

§ 4002. If a counter affidavit be tendered, as hereinbefore provided for, the Sheriff shall not turn the party out of possession, but the contending parties shall be remitted to their respective rights, and the Sheriff shall return both affidavits, and deposit them in the office of the Clerk of the Superior Court of the County in which the land lies, upon which an issue shall be made up and tried by a jury, according to the laws of this State.*

Where affi-
davit shall
be returned
and issue
tried.

§ 4003. If the finding of the jury upon the trial of the issue provided for in the preceding Section shall be for the plaintiff, or movant, the Clerk shall issue upon the judgment a writ of *habere facias possessionem*, including a *feri facias* for the costs.

If verdict be
for movant,
writ of pos-
session shall
issue.

§ 4004. [The trustees, commissioners, and other owners of camp grounds in this State, shall have the exclusive right to prevent intruders and squatters from occupying any land within the boundaries of said camp grounds, and for instituting proceedings against any such intruders and squatters, in the same manner as is now authorized by law, against intruders and trespassers upon land in this State.] (a)

Intrusions
on camp
grounds.

ARTICLE II.

PROCEEDINGS AGAINST TENANTS.

SECTION.

- 4005. Affidavit of the landlord.
- 4006. Warrant against the tenant.
- 4007. Tenant may arrest proceedings.
- 4008. How issue shall be tried.
- 4009. Judgment and writ of possession.

SECTION.

- 4010. Distress warrant—how obtained.
- 4011. By whom levied.
- 4012. Replevy of property.
- 4013. Claims.

§ 4005. In all cases where a tenant shall hold possession of lands or tenements over and beyond the term for which the same

*See Section 276. (a) Acts of 1863-4, pp. 63-4.

Article 2.—Proceedings Against Tenants.

When a
tenant holds
over, etc.

were rented or leased to him, [or shall fail to pay the rent when the same shall become due,] (a) and in all cases where lands or tenements shall be held and occupied by any tenant at will or sufferance, whether under contract of rent or not, and the owner of the lands or tenements shall desire the possession of the same, such owner may, by himself, his agent, or attorney in fact, or attorney at law, demand the possession of the property so rented, leased, held, or occupied; and if the tenant refuses or omits to deliver possession when so demanded, the owner, his agent, or attorney at law, or attorney in fact, may go before the Judge of the Superior Court, or any Justice of the Peace, and make oath of the facts.

Warrant
shall issue
for the ten-
ant's remov-
al.

§ 4006. When the affidavit provided for in the preceding Section shall be made, the officer before whom it is made shall grant and issue a warrant, or process, directed to the Sheriff, [or his deputy, or any lawful Constable,] (b) of the County where the land lies, commanding and requiring him to deliver to the owner, or his representative, full and quiet possession of the lands or tenements mentioned in the affidavit, removing the tenant, with his property found thereon, away from the premises.

Tenant may
arrest pro-
ceedings by
counter af-
fidavit and
bond.

§ 4007. The tenant may arrest the proceedings and prevent the removal of himself and goods from the land by declaring on oath that his lease or term of rent has not expired, and that he is not holding possession of the premises over and beyond his term, [or that the rent claimed is not due,] (b); or that he does not hold the premises, either by lease, or rent, or at will, or by sufferance, or otherwise, from the person who made the affidavit on which the warrant issued, or from any one under whom he claims the premises, or from any one claiming the premises under him; [*provided*, such tenant shall at the same time tender a bond with good security, payable to the landlord, for the payment of such sum with costs as may be recovered against him on the trial of the case.] (c)

Issue tried
in Superior
Court.

§ 4008. If the counter affidavit and bond, provided for in the preceding Section, be made and delivered to the Sheriff or Deputy Sheriff, or Constable, the tenant shall not be removed; but the officer shall return the proceedings to the next Superior Court of the County where the land lies, and the fact in issue shall be there tried by a special jury as in cases of appeal.*

(a) Acts of 1865-6, pp. 34-5. (b) Acts of 1865-6, p. 35. (c) Acts of 1866, p. 25.

* See Section 276.

Article 2.—Proceedings Against Tenants.

§ 4009. If the issue specified in the preceding Section shall be determined against the tenant, judgment shall go against him for double the rent reserved or stipulated to be paid; or, if he be a tenant at will or sufferance, then for double what the rent of the premises are shown to be worth, and the movant or plaintiff shall have a writ of possession, and be by the Sheriff, Deputy, or Constable, placed in full possession of the premises.

Double rent
and writ of
possession—
when.

§ 4010. Any person who may have rent *due*, when the sum does not exceed fifty dollars, may himself, his agent, or attorney, make application to any Justice of the Peace within the district where his tenant may reside, or where his property may be found, and obtain from such Justice a distress warrant for the sum claimed to be due, on the oath of the principal, his agent, or attorney, in writing, for the said rent, which may be levied by any Constable duly qualified on any property belonging to the said tenant, whether found on the premises or elsewhere, who shall advertise and sell the same as provided in case of levy and sale under execution.

Distress
warrants—
how obtain-
ed.

Oath of the
principal, his
agent, or at-
torney suffi-
cient.

Under \$50
may be lev-
ied by a Con-
stable.

§ 4011. When any distress warrant shall issue for a sum exceeding fifty dollars, it shall be levied by the Sheriff of the County or his Deputy, and advertised and sold as provided in cases of other executions.

Over \$50
may be lev-
ied by the
Sheriff or
Deputy.

§ 4012. The party distrained may in all cases replevy the property so distrained by making oath that the sum, or some part thereof, distrained for is not due, and give security for the eventual condemnation money; and in such case the levying officer shall return the same to the Court having cognizance thereof, which shall be tried by a jury as provided for the trial of claims.

Property le-
vied upon
may be re-
plevied.

§ 4013. When property distrained may be claimed by a third person, the same shall be claimed on oath, and bond given as required in cases of other claims, which shall be returned and tried as provided by law for the trial of the right of property levied upon by execution.*

Claims—
how inter-
posed and
tried.

* See Section 276.

The 4 amendment can remove the
a distress warrant. See 4th Sec.
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CHAPTER II.

FORCIBLE ENTRY AND DETAINER.

SECTION.

4014. Fact to be tried by jury.
 4015. If all do not attend.
 4016. Possession and force submitted.
 4017. Oath of jury.
 4018. Restitution to be made.

SECTION.

4019. Time allowed for *certiorari*.
 4020. Service on non-residents.
 4021. Non-residents to give bond.
 4022. No bar to indictment.

15-40 303
 Justices to try the fact by a jury. § 4014. Any one or more Justices of the Peace, upon complaint made on oath of any entry into lands or tenements, or of any forcible detainer of the same, shall have power to draw a jury of twelve men from the jury box of the district in which the lands and tenements so alleged to be forcibly entered or detained are situated, and cause the Sheriff of the County, or the Constable of the district, to summon them to be and appear at the usual place of holding Court in the said district on a certain day, to be appointed by the said Justice or Justices, for the purpose of trying the fact of such forcible entry or detainer. And the said Justice or Justices shall also issue a summons to be directed to the person or persons charged with such forcible entry or detainer, and cause the same to be served on him by the Sheriff or Constable at least five days before the time appointed for trial, requiring him to appear and defend the charge alleged against him.

How summoned. § 4015. If all the jurors should not attend, or if there should be a legal objection to any of them, then the Justice or Justices may cause the jury to be completed by *tales* jurors, [and if a jury can not be obtained in the district, the Justice or Justices may draw a jury from an adjoining district in the County, to try said case.] (a)

Possession and force only to be submitted. § 4016. Upon the trial the only facts which the jury shall inquire into, shall be the possession and the force, but they shall have no power to inquire into the merits of the title on either side.

Oath of jury. § 4017. The following oath shall be administered to the jurors—viz: "You shall well and truly inquire whether A. B. has made any forcible entry into the lands or tenements of C. D., and him ejected therefrom, or forcibly detained the lands or tenements of the said C. D., and a true verdict give according to the facts as they may appear to you in evidence. So help you God."

Chapter 2.—Forcible Entry and Detainer.

§ 4018. If upon the trial of such case the jury shall find such forcible entry or forcible detainer, or both, then the said Justice or Justices shall give judgment accordingly, and cause the Sheriff to make restitution of possession of the premises to the party aggrieved; *provided*, that if the person charged with such forcible entry or detainer, or those under whom he claims, shall have been in peaceable possession of the premises for the space of three years or more as aforesaid, immediately preceding the date of such warrant, then no restitution of possession shall be made.

Restitution
to be made.

But not
against three
years' pos-
session.

§ 4019. [In all cases of forcible entry and detainer, the enforcement of the judgment shall be suspended for ten days, to allow the party dissatisfied with the same time to make out his writ of *certiorari*; *provided*, that the party complaining of said decision shall, at the time it is made, give the opposite party written notice of his intention to take said case to the Superior Court.] (a)

Times given
for certiorari

§ 4020. If the defendant charged with a forcible entry or detainer is not a resident of the County where the land or tenement is situated, service of the summons may nevertheless be perfected on him or his tenant, by the Sheriff or Constable, as though he resided in the County.

Service
on non-resi-
dents.

§ 4021. [All non-residents, defendants, who may forcibly enter or forcibly detain, or forcibly enter and detain, (and against whom suit may be instituted by their tenants,) any lot or parcel of land in any County in this State, shall be compelled to give bond and security for all costs and damages which may be recovered against him for such forcible entry or detainer, or forcible entry and detainer: *provided*, that such defendant shall not be compelled to give such bond until after the commencement of an action for such offence as provided by law. Said bond shall be made payable to the plaintiff in such action, subject to be recovered as in cases of bond given on appeal in this State, and on failure to give such bond, the jury trying said cause shall award possession of the premises in dispute to the plaintiff.] (b)

Non-resi-
dents to give
bond in cer-
tain cases.

§ 4022. No proceedings under the provisions of this Chapter shall exempt any person guilty of a forcible entry or detainer from indictment and punishment, under and by virtue of the provisions of this Code.

No bar to
indictment.

(a) Acts of 1865-6, p. 222. (b) Acts of 1853-4, pp. 42-3.

TITLE XXII.

PROCEEDINGS FOR THE ABATEMENT OF NUISANCES.

CHAPTER I.

PROCEEDINGS FOR THE ABATEMENT OF NUISANCES.

SECTION.

4023. Nuisance—how removed.

4024. When in a town or city.

4025. Notice to parties.

4026. When it is a grist or saw mill.

SECTION.

4027. Application—by whom made.

4028. Fees of Clerk, witness, and jurors.

4029. Fees of the Sheriff.

May be removed and how.

§ 4023. Any nuisance which tends to the immediate annoyance of the citizens in general, is manifestly injurious to the public health and safety, or tends greatly to corrupt the manners and morals of the people, may be abated and suppressed by the order of any two or more Justices of the Peace of the County, founded upon the opinion of twelve freeholders of the same County, who shall be summoned, sworn, and impanneled, for that purpose; which order shall be directed to and served by the Sheriff of the County, or his deputy.

When in town or city.

§ 4024. If the nuisance complained of exists in a town or city, under the government of a Mayor, Intendant, Alderman, Wardens, or a Common Council, or Commissioners; such nuisance, by and with the advice of said Aldermen, Wardens, Council, or Commissioners, may be abated and removed by order of said Mayor, Intendant, or Commissioners; which order shall be directed to and executed by the Sheriff or the Marshal of said town or city, or their deputy.

Notice.

§ 4025. Reasonable notice shall be given to the parties interested of the time and place of the meeting of such Justices and freeholders, or of such Mayor, Intendant, Aldermen, Wardens, Council, or Commissioners.

Grist or saw mill or other water machinery.

§ 4026. If the nuisance complained of is a grist or saw mill, or other water machinery of valuable consideration, the same shall not be destroyed or abated except upon the affidavit of two or more freeholders, before one or more of the Justices of the Inferior Court of the County in which the nuisance complained of may exist, testifying that the health of the neighborhood, according to

Chapter 1.—Proceedings for the Abatement of Nuisances.

their opinion and belief, is materially injured by such mill-dam, or other obstruction to a water course by other machinery, as may be complained of; whereupon, it shall be the duty of such Inferior Court, as soon as practicable, to cause a jury of twelve men to be drawn from the jury box of the Inferior Court, and summoned by the Sheriff or his deputy, for the trial of the cause, who, together with the said Court, shall attend at the Court House of said County, to adjudge the case of nuisance complained of; and all parties shall have a reasonable time allowed them to summon their witnesses and procure their attendance.

Jury—how drawn.

§ 4027. A public nuisance may be abated on the application of any citizen of the district, and a private nuisance on the application of the party injured.

By whom the application may be made.

§ 4028. When it may become necessary for the Justice of the Inferior Court, or other tribunal authorized by this Code so to do, to cause a jury to be summoned and impaneled to try a cause of nuisance arising from water machinery, mill-dam, or otherwise, the Clerk, witnesses, and jurors, shall be allowed such fees in said causes as are allowed by law in the Inferior Courts of this State.

Fees of the Clerk, witnesses, and jury.

§ 4029. The Sheriff, or other officer, for summoning such jury, shall receive the sum of three dollars; and when acting under the order of said Inferior Court, or other tribunal, shall remove any nuisance, machinery, or mill-dams, for which he shall be allowed such fees as the Court may deem reasonable and just.

Fees for summoning jury.

TITLE XXIII.

OF INQUESTS, AND PROCEEDINGS THEREON.

CHAPTER I.

INQUESTS, AND PROCEEDINGS THEREON.

SECTION.

- 4030. Jury—how summoned.
- 4031. Defaulting jurors may be fined.
- 4032. Number of jury, etc.
- 4033. Jury—how sworn.
- 4034. Oath of the jury.

SECTION.

- 4035. Coroner's charge to the jury, etc.
- 4036. Witness—how summoned, etc.
- 4037. Witness may be recognized.
- 4038. Inquests to be returned to Sup'r C't.
- 4039. Removal of body.

Chapter 1.—Inquests, and Proceedings thereon.

§ 4030. Whenever a Coroner of any County in this State shall have notice or be certified of the death of any person within the limits of the County of which he is Coroner, occurring under circumstances which make it his duty, under the laws of this State, to hold an inquest, he shall make out a precept, directed to any Constable of the County where the dead body is found or lying, requiring him to summon a jury of inquest composed of good and lawful men of such County, to appear before such Coroner at the time and place mentioned in the precept; which precept may be in the form following—that is to say:

Coroner must issue precept for summoning jury.

STATE OF GEORGIA, }
 ——— COUNTY. } *To any Lawful Constable of said County—Greeting:*

Form of the precept.

“You are required immediately to summon eighteen good and lawful men of said County to be and appear before me, the undersigned, Coroner of the County aforesaid, at ——— in said County, on the ——— day of ——— at — o’clock of that same day, then and there to inquire of, do and execute all such things as in behalf of the State shall be given them in charge touching the death of ———, (or a person unknown, as the case may be,) and be you then and there with this precept to certify what you have done in the premises, and further to do whatsoever else may in behalf of the State be enjoined upon you.

“Given under my hand and seal this the ——— day of ——— in the year of our Lord ———.”

Coroner. [L. S.]

Constable or Coroner may summon the jury.

Which precept shall be forthwith executed by the Constable in whose hands it may be placed; and if the services of a Constable can not be conveniently obtained, the Coroner may summon the jury himself.

Defaulting jurors may be fined.

§ 4031. Any juror failing to attend and serve on such Coroner’s inquest, after being duly summoned, may be fined by the Coroner in a sum not exceeding ten dollars, to be levied and collected by execution issued by the Coroner, unless such defaulting juror shall file in the Clerk’s office of the Inferior Court a good and sufficient excuse for the default, to be judged of by the next Inferior Court held thereafter.

Number of jury, etc.

§ 4032. Every Coroner’s jury shall be composed of twelve jurors, seven of whom shall be competent to return a verdict. [Except when the deceased body upon which an inquest is to be

Chapter 1.—Inquests, and Proceedings thereon.

held is found lying without the corporate limits of any city or town in this State: then, and in that case, a jury of six persons shall be competent to hold the inquest and return a verdict, a majority of them concurring therein.] (a)

§ 4033. The following oath shall be administered to the foreman of the jury by the Coroner—to wit: “You, as foreman of the inquest, shall diligently inquire, and true presentment make, on behalf of the State of Georgia, how and in what manner C. D., (or a person deceased, unknown, as the case may be,) now here lying dead, came to his death, and of such other matters relating to the same as shall be lawfully required of you according to evidence.” And the remainder of the jury in convenient numbers at a time shall be sworn by the Coroner as follows—to wit: “The same oath which the foreman of this inquest has taken on his part, you and each of you shall observe and keep upon your part. So help you God.”

§ 4034. The Coroner shall charge the jurors to declare of the death of the person upon whose body the inquest is held, whether such person died by murder, manslaughter, misadventure, misfortune, accident, or otherwise; and who, and when, and by what means, and in what manner; and if by murder, who were principals and who were accessories; and if by manslaughter, who were the perpetrators, and with what instrument the stroke or wound was in either case given; and so of all the prevailing circumstances which may come from presumption. And if by misadventure, misfortune, accident, or otherwise, whether by the act of God or man; and whether by hurt, fall, stroke, drowning, or in any other way; also what person was present at the death; also from whence the deceased came, and who he was, and who are his parents, relations and neighbors; also who were the finders of the body; also whether he died in the same place the body was found, or elsewhere; and if elsewhere, who moved the body; and also of all the circumstances relating to said death; and if the deceased died in prison, the Coroner shall further charge the jury to inquire whether he died by hard usage there or not, and if so by whom; and if the deceased put an end to his life, to inquire of the manner, means used, or instrument employed, and of the circumstances concerning it; and the jury shall have full and unre-

(a) Acts of 1862-3, pp. 165-6.

Chapter 1.—Inquests, and Proceedings thereon.

stricted powers to inquire and pass upon all the matters and things thus given them in charge, and they shall have this power even if the whole or a part of the charge be omitted.

Witnesses how summoned and sworn. § 4035. The Coroner shall have full power to issue subpoenas to, or otherwise to compel the attendance of witnesses upon such inquests, to declare their knowledge touching the matters of inquiry before the inquest, and the Coroner shall administer to such witnesses the following oath—to wit: “The evidence that you shall give this inquest on behalf of the State touching the death of C. D., (or a person unknown, as the case may be,) shall be the truth, the whole truth, and nothing but the truth. So help you God.”

Witnesses to be recognized to appear and give evidence. § 4036. If the inquest discloses facts which lead or may lead to the prosecution of any person for the homicide of the person upon whose body the inquest is held, it shall be the duty of the Coroner to require all witnesses who testify to facts material to the issues involved in such prosecution to enter into a recognizance to appear and give evidence in the Superior Court of the County in which the inquest is taken, against the defendant in such prosecution; and shall also issue a warrant for the arrest of the person suspected of the homicide, returnable as other warrants.

Inquisition to be returned to Superior Court. § 4037. The Coroner shall commit to writing the substance of the testimony delivered before the inquest, and shall return all the papers and proceedings touching the inquisition to the Superior Court of the County in which it is taken, held next after such inquest.

§ 4038. If the verdict of the jury suggests that the death was caused by poison, the Coroner shall have power to cause an accurate examination of the contents of the stomach and intestines, by skillful physicians, and the reasonable expenses of such examination shall be paid out of the County Treasury.

Body may be removed. § 4039. [When the deceased body lies in a place inconvenient for holding an inquest, the Coroner, or any other person under his direction, shall be allowed to remove the body to a suitable spot.] (a)

TITLE XXIV.

PROCEEDINGS IN COURTS OF ORDINARY.

CHAPTER I.

PROCEEDINGS IN COURTS OF ORDINARY.

ARTICLE 1.—*Sessions and Adjournments of the Court of Ordinary.*ARTICLE 2.—*Practice in the Court of Ordinary.*

ARTICLE I.

SESSIONS AND ADJOURNMENTS OF THE COURT OF ORDINARY.

SECTION.

4040. When held.

4041. Office—where kept.

SECTION.

4042. May be adjourned.

§ 4040. The several Courts of Ordinary shall be held in each County in this State, by the Ordinary thereof, on the first Monday in each month. When held.

§ 4041. The said Ordinary shall keep his office at the County site, or such other place as may be authorized by law; which office shall be open for the transaction of all business at all times, except Sundays and holidays; but no will shall be admitted to record, or letters testamentary of administration or guardianship, or letters dismissory, nor shall any order for the sale of real estate be granted, except at a regular term of said Court. Office—
where kept.

When open.

§ 4042. If, from any circumstance, the Ordinary should fail to hold said Court at the regular term, or at any adjourned term, or the business of the Court requires it, said Ordinary, or his deputy clerk, may adjourn said Court to such times as he may think proper, *provided* such adjournment shall be entered on the minutes of the Court. May be ad-
journed.

Article 2.—The Practice in the Court of Ordinary.

ARTICLE II.

OF THE PRACTICE IN THE COURT OF ORDINARY.

SECTION.

4043. Applications and proceedings.
 4044. The order—what it must contain.
 4045. Objections must be in writing.
 4046. Proceedings must be filed.

SECTION.

4047. Minutes of proceedings.
 4048. Docket of applications.
 4049. Docket of executors and adm'rs.
 4050. May attach for contempt.

§ 4043. Every application made to the Ordinary for the grant-
 ing of any order shall be by petition in writing, stating the
 grounds of such application and the order sought. If notice of
 such application, other than by published citation, is necessary
 under the law or in the judgment of the Ordinary, he shall cause
 a copy of such application, together with a notice of the time of
 hearing, to be served by the Sheriff, or some lawful officer, upon
 the party or parties to be notified, at least ten days before the
 hearing, and an entry of such service made on the original. In
 extraordinary cases, where it is necessary to act before such no-
 tice can be given, the Ordinary shall so direct the proceedings
 as to make no final order until such notice has been given.

Applications
must be in
writing.

Notice of
proceedings
—on whom
and how
made.

§ 4044. The order of the Ordinary shall always recite the
 names of the persons so notified, and the compliance with the
 provisions required.

Order—
what it must
contain.

§ 4045. All objections or caveats to an order sought shall also
 be in writing, setting forth the grounds of such caveat. The pe-
 tition and caveat shall be amendable at all times and in every
 particular.

Objections
must be in
writing.

§ 4046. The proceedings shall always be kept of file, and when-
 ever the order is granted the proceedings shall be recorded in a
 book to be kept for that purpose, for which the Ordinary shall re-
 ceive the same fees as are allowed Clerks of the Superior Court
 for similar services.

Proceed-
ings must be
filed.

§ 4047. The Ordinary shall keep a regular book of minutes of
 the proceedings of his Court, on which he shall enter all the ap-
 plications refused as well as those granted.

Minutes of
proceedings.

§ 4048. He shall keep a docket of all applications and causes
 pending in his Court, which shall be regularly continued from term
 to term until the final disposition thereof.

Docket of
applications.

§ 4049. He shall also keep a docket of all the executors, ad-
 ministrators, guardians, and trustees who are liable to make re-
 turns in his Court, with regular entries of their returns, and of

Docket of
executors,
etc.

Article 1.—Sessions and Adjournments.

such as have failed to make returns as required by law and the order of the Court.

§ 4050. The Ordinary shall have power to enforce obedience to all lawful orders of his Court, by attachment for contempt, in the same manner as a Court of Equity may do. May attach
for contempt

§ 4051. [The Ordinary may appoint some fit and proper person to open and adjourn his Court, in the absence of an officer to do so.] (a)

TITLE XXV.

PROCEEDINGS OF THE INFERIOR COURT SITTING FOR
COUNTY PURPOSES.

CHAPTER I.

PROCEEDINGS OF THE INFERIOR COURT SITTING FOR COUN-
TY PURPOSES.ARTICLE 1.—*Sessions and Adjournments.*ARTICLE 2.—*Proceedings therein.*

ARTICLE I.

SESSIONS AND ADJOURNMENTS.

SECTION.

4052. When held, and by whom.

4053. May adjourn.

4054. May hold special meetings.

SECTION.

4055. Sheriff shall attend.

4056. The Clerk and his duty.

4057. Jurisdiction of said Court.

§ 4052. The Justices of the Inferior Court (or a majority of them) in the several Counties in this State, shall meet at the Court House of their respective Counties on the first Tuesday in every month, for the purpose of hearing such matters as may be brought before them within their jurisdiction, and when so assembled and organized, they shall be known as the Inferior Court sitting for County purposes. By whom
and when
and where
held.

(a) Acts of 1861, p. 56.

Article 2.—Proceedings therein.

§ 4053. Such Court may adjourn to such other time as will best promote the ends of justice.

§ 4054. Any one of said Justices may call a special meeting of said Court for County purposes, at any time when the ends of justice may require such meeting, and in such case the Justice making such call shall notify the other Justices of the time of such meeting.

§ 4055. The Sheriff of the County shall attend all meetings of said Court, when sitting for County purposes, and be subject to the order thereof.

§ 4056. The Clerk of the Inferior Court shall by virtue of his office be Clerk of said Court when sitting for County purposes, and subject to the order thereof.

§ 4057. Said Court may hear and determine all matters over which the law gives the Justices jurisdiction.

ARTICLE II.

PROCEEDINGS THEREIN.

SECTION.

- 4058. Application to said Court.
- 4059. Docket must be kept.
- 4060. Notice of proceedings.
- 4061. Minutes of proceedings.

SECTION.

- 4062. Jury fees—when paid to Treasurer.
- 4063. May punish contempts.
- 4064. Amendments.

§ 4058. All applications for proceedings before the Inferior Court sitting for County purposes shall be by petition in writing, which shall plainly and distinctly set forth the grounds of the proceedings desired, and in like manner, all objections to said proceedings shall be in writing, which shall fully set forth the grounds of objection.

§ 4059. Said Court shall cause a docket to be kept in which shall be entered all motions and applications, which shall be called and disposed of in the order in which they stand upon the docket, unless the ends of justice require a different course.

§ 4060. When individuals are to be affected by any order or judgment of said Court, such individuals shall have reasonable notice of the time and place of hearing.

§ 4061. Said Court shall cause to be kept a minute of its proceedings.

§ 4062. For each decree or verdict in the Superior Court, the

Article 1.—When and where Held.

jury fee shall be three dollars, and for each confession of judgment, one dollar, to be taxed in the bill of costs, and when collected, shall be paid into the County Treasuries respectively.

Jury fees—
how collect-
ed and dis-
posed of.

§ 4063. The said Court shall have power to punish for contempt, under the same rules and regulations as are provided for the Inferior Courts.

Contempts
—how pun-
ished.

§ 4064. Amendments shall be allowed as provided in other Courts.

Amend-
ments.

NOTE.—As to other powers and duties of the Justices of the Inferior Court, see Part 1, Title 5, Chapter 5, Article 1; and Part 1, Title 6, Chapters 1, 2, 3.

TITLE XXVI.

OF PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

OF PROCEEDINGS IN JUSTICES' COURTS.

ARTICLE 1.—*Justices' Courts—when and where held.*

ARTICLE 2.—*Jurisdiction of Justices' Courts.*

ARTICLE 3.—*Commencement of Suits—Service of Summons.*

ARTICLE 4.—*Pleas and Defenses.*

ARTICLE 5.—*Evidence—Witnesses—Interrogatories.*

ARTICLE 6.—*Trial and Judgment.*

ARTICLE 7.—*Appeals.*

ARTICLE 8.—*Claims and trial thereof.*

ARTICLE 9.—*Final Judgment and Execution.*

ARTICLE 10.—*Justices' Courts may Rule Constables, etc.*

ARTICLE 11.—*Levy and Sale under Fi. Fas. from a Justices' Court.*

ARTICLE I.

JUSTICES' COURTS—WHEN AND WHERE HELD.

SECTION.

4065. When held.

SECTION.

4066. Where held.

§ 4065. The Justices' Courts of this State shall be held once a

Article 2.—Jurisdiction.

Court—
when held. month in each militia or company district, on a day to be fixed and appointed by the Justices of the Peace of the district; and whenever the business requires it the term may continue for two or more days.

Court—
where held. § 4066. The Justices' Court shall be held at a place in each militia district as nearly central as convenience will admit.

ARTICLE II.

JURISDICTION OF THE JUSTICES' COURTS.

SECTION.

4067. Shall not try action for damages.
4068. Notes for the same consideration.
4069. Jurisdiction as to amount.
4070. Residence necessary for jurisdiction

SECTION.

4071. Co-obligors in different districts, etc
4072. Justice being a party—how sued.
4073. When suit is in adjoining district.
4074. Maker and indorser—how sued.

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Can not try cases for damages. § 4067. The Justices' Courts shall try no action to recover damages, [except cases of trespass upon personal property, where the amount claimed does not exceed the jurisdiction of the Court: in which cases said Courts may give judgment for plaintiffs for the amount of damages that may be proven, under the same rules and regulations as in the Superior Courts in such cases; *provided*, that either party, being dissatisfied with the judgment of the Court, shall have the right of an appeal to a jury, which shall be tried as other appeals in said Court.] (a)

Suits on several notes for same debt. § 4068. The Justices' Courts shall have jurisdiction of all suits brought on two or more promissory notes, or other evidences of debt not exceeding fifty dollars each, although given between the same parties for one and the same debt or consideration.

Suits not over \$50 principal. § 4069. The Justices' Courts shall have jurisdiction to hear and determine all suits on promissory notes, accounts, due bills, and other evidences of debt, where the principal sum sued for does not exceed fifty dollars.

Ten days residence gives jurisdiction. § 4070. Ten days' residence of a party within a militia district shall be sufficient to give the Justices' Court of such district jurisdiction of suits against him.

Co-obligors sued in either district. § 4071. When a bond, note, bill, open account, or other evidence of debt shall be against several persons, residing in differ-

Article 3.—Commencement of Suits, Service, etc.

ent Counties or districts, the plaintiff shall have his option to bring suit on such demand in either of such Counties or districts.

§ 4072. In all cases in which a Justice of the Peace is a party, the suit may be brought in the Justices' Court nearest to the residence of the defendant in the County, or in the district where the defendant resides, at the option of the plaintiff. If Justice of the Peace is a party.

§ 4073. In cases provided for in Section 4072, the Justice of the Peace in the adjoining district may issue summons, and proceed against the defendant in the same manner as if the defendant were a resident of such adjoining district. When adjoining district has jurisdiction.

§ 4074. The maker and indorser of a promissory note or other evidence of debt, not exceeding fifty dollars principal, may be sued in the district of the maker's residence, and the indorser may be served with process in the same manner as that prescribed in the case of joint contractors. Suit vs. maker and indorser to be in district of maker.

ARTICLE III.

COMMENCEMENT OF SUITS, SERVICE, ETC.

SECTION.

- 4075. Summons—how issued and directed
- 4076. Must specify time and place.
- 4077. Must be served nine days before C't
- 4078. Who may serve the summons.
- 4079. What officer may serve co-obligors.
- 4080. How summons is to be returned.

SECTION.

- 4081. Proceedings uniform.
- 4082. Appearance term of cases.
- 4083. Bail in Justices' Courts.
- 4084. Parties may settle cases.
- 4085. Justices and Constables give receipt

§ 4075. All suits in the Justices' Courts of this State shall be commenced by warrant or summons, which shall be issued and signed by the Justice of the Peace of the district in which the suit is brought, and shall be directed to the defendant, commanding him to appear at the Court to which the summons is returnable, to answer the plaintiff's demand, which summons shall bear date ten days before the return term of the Court. Summons—how issued and signed.

§ 4076. The time and place of holding the Court must be specified in the summons. Time and place must be specified.

§ 4077. The summons or warrant shall be served upon the defendant, either by giving him a copy of the same in person, or by leaving such copy at his usual and most notorious place of abode, at least nine days before the sitting of the Court to which the summons is returnable. Summons—how and where served.

§ 4078. The summons may be served by the Constable of the

Article 3.—Commencement of Suits, Service, etc.

Who may serve the summons. district in which the suit is commenced, or if there be no such Constable, or he be a party to or interested in the case, such summons may be served by any Constable of the County.

In case of co-obligors. § 4079. In cases where suit is brought against joint obligors or joint promissors, or other joint debtors, and in cases where the Justice of the Peace is a party, and in cases where there is no Justice in the district of the defendant's residence—in all these and like cases, the Constable of the district in which suit is brought may serve all processes, on all the parties, and do all other legal acts required of him in the progress of such suit, in any district of the County.

Summons must be filed and kept. § 4080. The officer serving the summons shall return the original, with his entry of service thereon, to the Justice of the Peace before whose Court the suit is pending, and the Justice shall file and preserve the said original summons with the other papers appertaining to his office.

Proceedings to be uniform. § 4081. The proceedings of the Justices' Courts shall be uniform throughout the State, unless otherwise provided for, and each Justice of the Peace shall keep a fair and legible book of entry of all civil proceedings had before him for the recovery of debts.

Appearance term. § 4082. The term of the Court to which the summons is made returnable shall be deemed and considered the appearance term, when the case shall be docketed on what shall be called the appearance docket, unless the demand sued on be for rent, in which case it shall stand regularly for trial at the first or appearance term.

Bail in Justices' Court. § 4083. The Justices' Courts shall have power and authority to hold to bail for all debts within their jurisdiction and to enforce the liability of bail under the same rules and regulations as those which prevail on that subject in the Superior Courts; and when a bail process is placed in the hands of a Constable against one who is moving about from one district to another, such Constable may follow such itinerant defendant, and serve the process in any district in the County.

Parties may settle cases. § 4084. Any case in the Justices' Court may be settled at any time by the parties, upon payment of the costs which have accrued up to the time of such settlement.

§ 4085. Whenever any claim is given to a Justice of the Peace or Constable for collection, such Justice or Constable shall give a receipt therefor, and when the money is collected, such Justice

Article 4.—Pleas and Defenses.

or Constable shall pay the same to the plaintiff, his agent, or attorney, unless there be conflicting claims for the money, in which case the question shall be decided at the first Court, unless a continuance be had according to law.

Justices
and Consta-
bles must
give receipts
for claims.

ARTICLE IV.

PLEAS AND DEFENSES.

SECTION.

4086. Defenses same as in Superior Courts.

SECTION.

4087. *Non est factum* and dilatory pleas.

§ 4086. At the appearance term the defendant may plead any matter of defense to a suit in the Justices' Court which would be allowed to suits in the Superior and Inferior Courts.

What de-
fenses may
be set up.

§ 4087. All dilatory pleas must be filed at the first term of the Court, unless the failure to do so is shown to be the result of unavoidable cause; and all dilatory pleas and pleas of *non est factum* must be verified by the affidavit of the defendant at the time of filing the same.

What pleas
to be filed
under oath.

ARTICLE V.

EVIDENCE.

SECTION.

4088. Best evidence must be produced.

4089. Account against moving party.

4090. Defendant pleading usury.

4091. If plaintiff fails to answer.

SECTION.

4092. Party subject to cross-examination.

4093. Witnesses compelled to attendance.

4094. Testimony taken by commission.

§ 4088. In all cases in the Justices' Courts of this State, the best evidence the nature of the case will admit of shall be required.

Best evi-
dence re-
quired.

§ 4089. Where suit is brought upon an open account, against a party who has removed from the County in which the debt was contracted, or who resides out of the County in which the debt was contracted, such account must be proved by the written affidavit of the plaintiff; and when so proved shall be received in evidence as if it was proved in open Court. Nevertheless, if the defendant will file his written affidavit denying the justice and fairness of the whole or any part of such account, the Court shall not give judgment in favor of the plaintiff for that part of the account so denied and controverted, unless supported by other proof.

Accounts
against re-
moving or
non-resident
party may
be proved
by affidavit.

Article 5.—Evidence.

§ 4090. When a plea of usury is filed in the Justices' Court, the defendant may give the plaintiff ten days' notice of the plea accompanied with a copy of the same, and this notice shall entitle the defendant to the written affidavit of the plaintiff, as to whether or not the facts of the plea are true as to the usury, and whether or not the contract sued on was usurious, and such affidavit may be read on the trial as evidence by either party.

How defendant pleading usury may obtain discovery.

§ 4091. If the plaintiff, after being notified of the plea, fails to make the affidavit provided for in the preceding Section, the defendant shall be permitted to verify the facts of his plea by written affidavit, which affidavit may be read in evidence on the trial by either party.

If the plaintiff fails to answer.

§ 4092. Either party making an affidavit under the provisions of the two preceding Sections shall, nevertheless, be sworn and examined by the adverse party as any other witness; and in every case where one party offers himself as a witness, the other party shall have the privilege of being heard also on his own motion.

Party subject to cross-examination

§ 4093. Either one of the Justices of the Peace of the district in which a suit is pending, may issue a subpoena, directed to any witness whose testimony may be desired by either party in any case, which subpoena shall be served on the witness three days before the day of trial.

Witness may be subpoenaed.

§ 4094. Testimony may be taken, and brought into Court by interrogatories and commission, in any case pending in the Justices' Court, under the same rules and regulations which prevail on that subject in the Superior Court, except that the interrogatories shall be filed with the Justice of the Peace instead of the Clerk, and the notice required shall be five days instead of ten, after the expiration of which the Justice shall issue a commission, which shall be executed as provided for in the Superior and Inferior Courts.

Testimony may be taken by interrogatories.

ARTICLE VI.

TRIAL AND JUDGMENT.

SECTION.

4095. The second term shall be trial term.
4096. Cases may be continued three terms

SECTION.

4097. Justices to give judgment.

§ 4095. The second term shall be deemed and considered the trial term of all suits for the recovery of debts (except for rent),

Article 7.—Appeals.

at which term the case shall be tried, unless the same be continued according to law. Trial term.

§ 4096. Cases in the Justices' Courts may be continued three times, under the same rules which govern continuances in the Superior Courts. Continuances—how granted.

§ 4097. When cases are tried, the Justices of the Peace shall render judgment therein according to the law and the facts of each case, and such judgment shall be enforced by execution, unless prevented by appeal or other lawful means. Justice to give judgment.

ARTICLE VII.

APPEALS.

SECTION.

4098. Appeals—when and how entered.

SECTION.

4099. Appeals—how tried—juries.

§ 4098. Either party, being dissatisfied with the judgment of the Justice of the Peace, may, as matter of right, enter an appeal from such judgment, within three days (exclusive of Sundays) after the adjournment of the Court, under the same rules, regulations, restrictions, and liabilities (except as to damages for a frivolous appeal) which prevail on the subject of appeals in the Superior Courts. Appeals—how and when entered.
40 days
act 1868.

§ 4099. All appeals in the Justices' Courts shall be tried before one or both of the Justices of the Peace presiding therein, by five jurors, drawn, impaneled, and sworn as follows—to wit: The Justices of the Peace in each district shall, once in every two years, make out or procure a list of all persons liable to serve as jurors in the Superior Court, who may reside in their respective districts, and shall write the names of every person so liable on a separate piece of paper, or ticket, which ticket shall be deposited in a box in an apartment marked No. 1, and the said Justices, or one of them, in public, on a Court day, in the presence of and in conjunction with two freeholders, shall draw from said box not less than five nor more than seven of the names so deposited, from time to time, to try the causes depending on the appeal in said Court; which names, when so drawn, shall be entered in a book by the Justice who presides at such drawing, and the tickets so drawn shall be deposited in another apartment of the box marked No. 2. After all the names shall be drawn from apart- Appeals—how tried.
Jurors—how drawn and sworn.
194a 639
5 n 205

Article 8.—Claims in the Justices' Court.

ment No. 1, the drawing of names shall commence from apartment No. 2, and so on alternately. The jurors drawn as aforesaid shall be summoned by the Constable of the district five days before the Court at which they are called upon to serve. If there be a deficiency of jurors, the Constable, by direction of the presiding Justice, shall complete the jury by talesmen from the bystanders; *provided*, at least three of the persons drawn as aforesaid shall be present. The following oath shall be administered to the jury—to wit: "You shall well and truly try the causes depending between the parties at variance, and true verdicts give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either of the parties; *provided*, the case or cases submitted shall not be withdrawn from your consideration. So help you God."

ARTICLE VIII.

CLAIMS IN THE JUSTICES' COURT.

SECTION.

4100. Claim, affidavit, and bond.

4101. Claim—where and when tried.

SECTION.

4102. Continuance of claim cases.

Claims—
how inter-
posed.

§ 4100. When an execution issued from a Justices' Court shall be levied on property claimed by any person not a party to the execution, the claimant, his agent, or attorney, shall make oath that the property levied on is the right and property of the claimant, and shall also give bond and security in double the amount of the execution; which bond the levying officer is empowered to take, payable to the plaintiff or assignee of the execution, as the case may be, with condition to pay all costs and damages which the said plaintiff or assignee may sustain, in case it shall appear that such claim was frivolous and intended for delay only; which bond, on breach of the condition thereof, shall be recoverable in any Court having cognizance of the same.

Claims—
when, where
and how
tried.

§ 4101. When the claim affidavit is made, and the bond given, as directed in the preceding Section, the Constable shall postpone the sale of the property, and return the papers to the next Justices' Court from which the *fi. fa.* issued (unless the property levied on be land); and it shall be the duty of said Court to direct an issue to be made up, and to cause the right of property to

Article 9.—Final Judgment and Execution.

be tried at the first term by five jurors, impaneled and sworn as in cases of appeal.

§ 4102. Upon good cause, shown on oath, a claim case may be Continuance continued for one term by each party, and no longer.

ARTICLE IX.

FINAL JUDGMENT AND EXECUTION.

SECTION.

4103. Dignity and lien of judgments.

4104. Judgment against securities as such.

4105. Judgment in cases of set-off.

SECTION.

4106. Stay of execution.

4107. If defendant be insolvent.

§ 4103. All judgments that may be obtained in, and executions Dignity and lien of judgments. issued from, the Justices' Courts, shall bear equal dignity with judgments obtained in, and executions issued from, the Superior and Inferior Courts, and shall bind all the property of the defendant, and his securities, if any (except such as is exempt by law), from the date of such judgment until the same is fully satisfied.

§ 4104. Where suit is brought against joint obligors and joint promissors, and any one or more of them shall make it satisfactorily appear to the Court that he signed the contract sued on as security only, and was not interested in the consideration thereof, the Court shall enter up judgment and award execution against such party as security; and when the execution shall be satisfied by such security out of his own money or property, he shall have the right to control such judgment and execution for the purpose of remunerating himself out of the property of the principal in the same manner that securities on stay of execution may do; *provided*, the judgment and execution shall also be against such principal. Judgment and execution to go against securities as such.

§ 4105. When the defendant pleads and establishes a set-off greater than the demand of the plaintiff, the Court shall render judgment in favor of the defendant against the plaintiff for the excess or balance over and above the demands of the plaintiff, unless such balance exceeds the sum of fifty dollars principal, in which event the set-off of the defendant shall be, by the judgment of the Court, credited with the amount of the demand established and proven by the plaintiff—and the plaintiff in such case shall pay the costs. Judgment for defendant in cases of set-off.

Article 9.—Final Judgment and Execution.

§ 4106. When final judgment is rendered in the Justices' Court, either without an appeal or after a trial on the appeal, the party against whom the judgment is rendered, at any time within four days after the adjournment of the Court, shall have the right, by paying all the costs which have accrued, and giving good and sufficient security for the principal and interest involved in the case, to stay the execution for sixty days, if the judgment is for more than thirty dollars principal; and if the judgment be for thirty dollars principal, or under that sum, the execution shall be stayed for forty days, and when the time for which the execution is so stayed has expired, execution shall issue against the party and his security on stay for the amount of the judgment. In case any person, after being summoned on any complaint for debt in a Justices' Court, shall, before the sitting of such Court, remove out of the district, such Court may, nevertheless, give judgment against him; and if any person shall, after judgment of such Court, remove out of the district or County, or holds property in a different district or County, before satisfaction is made, such Justice may, in either case, issue execution against such person; which execution, being backed by any Justice of the County where such person resides, or where his property may be found, may be levied by any Constable of said County, and the after proceedings shall be the same as provided in other cases of levy and sale, by virtue of executions from Justices' Courts.

§ 4107. When an execution issued from a Justices' Court shall be returned by the proper officer, with an entry thereon that there is no property of the defendant out of which satisfaction of the execution can be made, the plaintiff in execution shall be bound and liable for the costs due thereon; and if the plaintiff, upon being notified of the return and the costs being demanded of him, shall fail or refuse to pay such cost, execution therefor may issue against such plaintiff.

ARTICLE X.

JUSTICES' COURTS MAY RULE THEIR CONSTABLES, PUNISH DEFAULTING JURORS AND WITNESSES, AND PUNISH CONTEMPTS.

SECTION.

4108. Liability of Constable for misconduct.
4109. Constable may be ruled.

SECTION.

4110. Witnesses failing to attend.
4111. Jurors may be fined for default.

Article 10.—Justices' Courts may Rule Constables, etc.

§ 4108. If any Constable shall fail to execute and return any process placed in his hands, or shall fail to account with and pay over to the person entitled thereto any money which he has received on any note, execution, or other paper, placed in his hands as such Constable, within ten days after the money is received, the person injured by such failure may apply to the Justice of the Peace of the district in which the defaulting Constable is acting as such, or in which he did act as such if he has gone out of office, (and if there be no Justice in such district, the party injured may apply to the Justice of any adjacent district,) and obtain a warrant against such Constable; and upon satisfactory proofs of the facts, the Justice to whom the application is made may, either in term time or vacation, award judgment and execution against the Constable for the full amount of the money collected and withheld, or which might have been collected, and the Justice may also fine the Constable for such default in a sum not exceeding ten per cent. on the amount of said money so collected, or which might have been collected.

Liability
of Constable
for miscon-
duct — how
enforced.

§ 4109. Constables may be ruled by their respective Justices' Courts and compelled to give an account of their actings and doings, or to pay over money received or collected by them in their official capacity, under the same rules and regulations as are pursued in the Superior Court in relation to officers of said Superior Court.

Constables
may be ruled

§ 4110. Any witness failing to attend the Justices' Court, after being duly served with a subpoena, shall be subject to a fine not exceeding ten dollars, which may be collected by execution, unless good excuse be shown for such failure at or before the next court day after the default; and such witness shall also be liable to a suit for damages at the instance of the party injured by his default, in any Court having cognizance of the same.

Witnesses
failing to at-
tend may be
fined.

§ 4111. Any juror, drawn and summoned, who shall neglect to appear and serve as such, shall be fined by the Justice of the Peace in a sum not exceeding three dollars, unless such juror shall show sufficient excuse for his default at the next Court thereafter, which fine may be collected by execution, or imprisonment until is paid, unless discharged by law.

Defaulting
jurors may
be fined.

ARTICLE XI.

LEVY AND SALE UNDER FI. FA. FROM JUSTICES' COURT.

SECTION.

4112. Levy and advertisement.

4113. Land—when subject.

SECTION.

4114. Bank and other stock.

4115. Compensation of Constables.

Time and place of sale. § 4112. All Constables shall advertise all intended sales, to be made by them under execution, at three or more of the most public places in their respective districts (unless otherwise provided), at least fifteen days before any sale shall be made, and shall give a full and clear description of the property to be sold; and all Constables' sales shall be at the place of holding Justices' Courts in the several company districts, and on a Court day, and that between the hours of ten o'clock, A. M., and four o'clock, P. M.

Levy and description of property.

Land may be levied on—when.

§ 4113. No Constable shall levy on any land unless there is no personal property to be found sufficient to satisfy the debt, which fact must appear by an entry on the execution, to be levied by a Constable of the County where such execution was issued, or where the property to be levied upon may be found; *provided*, that the defendant shall have the right in all cases to point out any portion of his property in his possession he may think proper, and should he point out land to be levied upon, the above entry of no personal property may be omitted.

Bank and other stock—how levied upon.

§ 4114. When any Constable shall have any execution placed in his hands against any person who is the owner of any shares or stock in any bank, or other corporation, or joint stock company in this State, he shall, on the application of the plaintiff, his agent, or attorney, indorse a levy on said execution of the number of shares belonging to the defendant, and make a return of the same to the Sheriff of the County in which he lives, which said Sheriff shall proceed to advertise and sell the same as required by law. When the Constable levies an execution in which the Sheriff is a party, or in which he is interested, he may proceed to sell the property as a Sheriff is authorized to do.

Compensation of Constables.

§ 4115. A reasonable compensation shall be allowed to Constables for carrying property levied upon to the place of sale, where there appears to be an absolute necessity for doing so, to be judged of by the Justices of the district.

NOTE.—For other powers and duties of Justices of the Peace and Constables, see Part 1, Title 5, Chapter 9, Articles 1, 2. As to levies on land, see Section 3597. When the Sheriff is a party, see Section 3577.

TITLE XXVII.

EQUITY PLEADING AND PRACTICE.

- CHAPTER 1.—*Of the Bill and Subpœna and Service thereof.*
 CHAPTER 2.—*Of Demurrers, Pleas and Answers.*
 CHAPTER 3.—*Of Interlocutory Decrees, Receivers, Masters, etc.*
 CHAPTER 4.—*Of the Trial and its Incidents.*
 CHAPTER 5.—*Of the Decree and its Enforcement.*
 CHAPTER 6.—*Of Other Proceedings in Chancery.*

CHAPTER I.

OF THE BILL AND SUBPœNA AND SERVICE THEREOF.

SECTION.

4116. Proceedings by bill.
 4117. Discovery—interrogatories.
 4118. Amendments.
 4119. Who may sue.
 4120. Persons laboring under disability.
 4121. Parties defendant.
 4122. Bills—different kinds of.
 4123. Discovery, etc.

SECTION.

4124. Venue.
 4125. Manner and time of filing.
 4126. Subpœna and service thereof.
 4127. Sanction of the Judge—when.
 4128. Duty of the Clerk.
 4129. Service of bills to marshal assets.
 4130. Addition of parties.
 4131. Dismissal of bill.

§ 4116. The ordinary proceeding in chancery shall be by bill, ^{Proceed-} which shall be addressed to the Superior Court, or the Judge pre- ^{ings by bill.} siding therein, and shall plainly set forth the ground of complaint, and the persons against whom a subpœna is prayed.

§ 4117. If discovery is sought of one or more of the defendants ^{Discovery} it shall be specially prayed, and interrogatories regularly number- ^{— interroga-} ed shall be embodied in the bill, as to every point on which dis- ^{tories.} covery is sought, and the names of the defendants from whom answers under oath or affirmation are required.

§ 4118. No mere formality, or omission of a formality shall vi- ^{Formality} tiate or delay a proceeding in equity, but the same liberality as to ^{and amend-} amendment shall be allowed therein as in a proceeding at law. ^{ment.}

§ 4119. Any person who can not sue at law, may complain in ^{Who may} equity, and every person who is remediless elsewhere, may claim ^{sue.} the protection and assistance of a Court of Equity to enforce any right recognized by the law.

§ 4120. Persons not *sui juris* may appear, either by guardian or

Chapter 1.—Of the Bill and Subpoena, etc.

Persons under disability. next friend, or guardian *ad litem* appointed by the Court. In the latter two cases the Court may require such bond as shall protect the interest of the person under disability.

Parties defendant. § 4121. Generally, all persons interested in the litigation should be parties to a bill, but legatees, distributees, and wards suing executors, administrators, and guardians need not join others interested in such estate as parties, complainant or defendant, unless some special adverse claim is set up as against such co-distributees or legatees.

Division of bills. § 4122. A bill is either original or in the nature of original. Every bill is original which commences a proceeding for relief or discovery, or both. Bills for the review, or avoidance, or injunction, or execution of a former decree, are in the nature of original bills. A cross bill need not be filed in this State. The defendant in every case may set up any matter in his answer, which under the English practice should be the subject of a cross bill, and may require therein any discovery from the complainant he may desire. No supplemental bill need be filed in this State. All such matter shall be allowed by way of amendment. If new parties are necessary, by reason of any matter thus set up in the answer or by way of amendment, the Court shall give such direction to the cause, to secure a hearing to such parties, as if a cross bill or supplemental bill had been filed. Bills of revivor are abolished.

Cross bill.

Supplemental bill.

Bill of revivor.

Discovery and perpetuating testimony. § 4123. A bill for discovery merely, or to perpetuate testimony, shall not be sustained unless some reason is shown why the proceeding at law is inadequate.

Venue. § 4124. All bills shall be filed in the County of the residence of one of the defendants, against whom a substantial relief is prayed, except in cases of injunctions to stay pending proceedings, when the bill may be filed in the County where the proceedings are pending, provided no relief is prayed as to matters not included in such litigation.

Mode and time of filing. § 4125. No bill shall require the sanction of the Judge before its filing unless it prays some extraordinary remedy. Each bill shall be filed in the Clerk's office, at least thirty days before the term to which it is returnable, and shall be served on the defendant at least twenty-five days before such term.

Subpoena. § 4126. It shall be the duty of the Clerk to annex to each bill a subpoena directed to the defendant, and requiring his appearance

Chapter 1.—Of the Bill and Subpœna, etc.

at the term of the Court to which the bill is returnable; and also, to make out and hand to the Sheriff, or his deputy, a copy of the bill and subpœna to be served on the defendant in like manner as petitions at common law. Service on defendants residing in another County, may be made by the Sheriff of such County, or any person, who after examination of the original and copy, will file an affidavit (subject to be traversed) as to the fact of service. If the defendant does not reside in the State, service of the bill or any order of Court may be made by publication in any public gazette of this State (under the direction of the Court) once a month for four months. If the non-resident defendant is represented in Court by an attorney at law or in fact, service on such attorney shall be sufficient. And in all cases not embraced within the foregoing provisions, the Judge may prescribe for extraordinary service, according to the exigency of each case.

Clerk's duty.

Service by Sheriff.

In another County.

On non-residents.

On attorney.

Extraordinary service.

§ 4127. If an extraordinary process or remedy is prayed, the sanction of the Judge of Court, or of some Judge of the Superior Courts of this State, must be first obtained before such process is issued or such remedy granted. The application may be *ex parte*, and granted without a hearing, in cases of manifest necessity. In all other cases the Judge should be careful to allow a hearing before passing the order. In all cases, on ten days' previous notice and the filing of defendant's answer, a motion may be made at chambers to set aside or dissolve the order granting the sanction of the Court.

Sanction of Judge to extra writs.

Ex parte—when.

Motion to set aside at chambers.

§ 4128. When such extraordinary process is granted, the Clerk shall annex the same, together with the ordinary subpœna, to the original bill, and also a copy thereof to the copy bill. Such bills and processes can be served only by a Sheriff, or his deputy, or a Coroner, and must be personal.

Duty of Clerk.

Service.

§ 4129. [When a bill in equity to marshal the assets of the estate of a deceased person is brought, service of the same may be effected by serving the defendants, or either of them, with a copy of the subpœna, of the injunction, and of the fiat of the Judge sanctioning the bill, without a copy of the bill, or any of the exhibits attache dthereto, and service so effected shall be sufficient; but the defendants, or any of them, shall be entitled to a copy or copies of the bill and exhibits, or any part thereof, on applying to the Clerk of the Court for the same, the Clerk charging to the plaintiff such fees as the existing laws now authorize the Clerk to

Service of bills to marshal assets.

Chapter 2.—Demurrers, Pleas, and Answers.

charge; *provided* such defendants as may be designated by the Judge sanctioning the bill, shall be served as required by existing laws.] (a)

Parties de-
fendant may
be added and
served. § 4130. [It shall be lawful, on application of any of the complainants, for the Clerk, at any time, to insert in such bill, subpoena and injunction, the name of any defendant that may have been omitted; and service, perfected in the manner specified in the preceding Section, shall be of the same effect, and operate in the same manner as though such defendant's name had been inserted in the original bill.] (a)

Dismissal
of bill. § 4131. A complainant may dismiss his bill at any time, either in term or vacation, so that he does not thereby prejudice any right of the defendant. If equitable claims by way of set-off or otherwise have been set up by the answer, the dismissal of the bill shall not interfere with the defendant's right to a hearing and trial on such claims in that proceeding.

Defend-
ant's right.

CHAPTER II.

OF DEMURRERS, PLEAS, AND ANSWERS.

SECTION.

- 4132. Mode of defense, etc.
- 4133. Demurrer—grounds of.
- 4134. Pleas—different kinds of.
- 4135. Answer and exceptions thereto.
- 4136. Verification—when necessary.

SECTION.

- 4137. Amendments—effect of, etc.
- 4138. How defendant must answer.
- 4139. Verification of non-residents.
- 4140. No replication or order for trial.
- 4141. Notice of filing, etc.

Modes of
defense. § 4132. A defendant may either demur, plead, or answer to a cause in equity, or may file two or all of these defenses at once, without waiving the benefit of either; or, may file two or more pleas to the same action, in like manner as at law. In all cases, Order of
disposition. demurrer, pleas, and answer, shall be disposed of in the order named; and all demurrers and pleas shall be filed and determined at the first term, unless continued by the Court or by consent of parties.

Time of
filing.

Demurrer. § 4133. A demurrer denies the right to the discovery or relief, in whole or in part, admitting the allegations of the bill to be true, and is founded either upon a want of jurisdiction in the Grounds of. Court, or of equitable right in the complainant, or upon a non-

Chapter 2.—Demurrers, Pleas, and Answers.

joinder or misjoinder of parties, or causes of action, or the absence of liability by the defendant to the complainant.

§ 4134. A pure plea sets up some additional fact or facts which, taken with the facts stated in the bill, show that the complainant is not entitled to relief. An impure or anomalous plea is filed when the complainant, anticipating the defendant's plea, alleges facts to impeach or annul its effect. In such case, the plea must negative the impeaching allegations, and must be accompanied by an answer discovering all the facts within defendant's power as to such allegations. A pure plea need not be verified. The answer accompanying an anomalous plea must be under oath or affirmation.

Pure plea.

Impure plea.

Verification.

§ 4135. The answer of defendant (unless further time be given), shall be filed within thirty days after the first term of the Court. If the answer is not full (where discovery is sought), exceptions may be filed at once, and, on ten days' notice, shall be argued and decided at Chambers. If sustained, the Judge shall require additional answer, on such terms as he may direct. Exceptions must be filed before the hour for jury business, on the second day of the second term.

Answer.

Exceptions.

§ 4136. If discovery is specially disclaimed, the defendant need not verify his answer; but the defendant shall always have the privilege of putting in an answer under oath for the purpose of using the same as evidence on any motion to dissolve an injunction, or to set aside any extraordinary process or remedy granted. A sworn answer is subject to amendment at any time, by leave of the Court, as other pleadings; but an admission made in such answer shall always be evidence, when offered by the other party.

Verification of answer.

Defendant's privilege.

Amendment

§ 4137. An amendment to a bill which materially changes the case opens the bill, as amended, to demurrer or plea. The defendant shall be allowed reasonable time for answering such an amendment. An immaterial amendment does not so open the bill, and need not be answered at all, or shall be answered *instantly*.

Effect of amendment.

Answer to amendment.

§ 4138. When discovery is sought, the defendant must answer to the best of his knowledge, information, and belief. If the defendant knows nothing, but answers only to his belief from the information of others, such an answer does not require the testimony of two witnesses to overcome it.

How defendant must answer.

§ 4139. When a bill, or answer, or other proceeding in equity, is required to be verified by a complainant or defendant who re-

Chapter 3.—Interlocutory Decrees, etc.

Verifying sides beyond the limits of this State, an affidavit, made before
 answer of any Commissioner of this State, or any Commissioner, or Master,
 non-resident or Chancellor of a Court of Equity, or Judge of any Court of the
 State where made, authorized to administer an oath, shall be a
 sufficient verification.

Replication the case for trial; but the parties may commence to take testi-
 and order for mony as soon as the bill is filed.
 trial.

Notice of filing of de- must be given to the complainant, or his solicitor, a reasonable
 murrer or time before the end of the first term.
 plea.

CHAPTER III.

OF INTERLOCUTORY DECREES, AND THE APPOINTMENT OF RECEIVERS,
MASTERS, AND AUDITORS.

SECTION.

4142. Interlocutory decrees and orders.
 4143. Master or Auditor.

SECTION.

4144. Report of Master—exceptions.
 4145. Fees of Master or Auditor.

Interlocuto- portion of the same is ready for or requires a decree, the Court
 ry decrees and orders. may hear and determine such matters, and pass such interlocuto-
 ry decree or order as may advance the cause and expedite a final
 hearing. If no issue of fact is involved, the verdict of a jury is
 unnecessary.

Master or Every Chancery Court in this State may appoint a
 anditor. Master, to whom it may refer such matters of account as are com-
 plicated in their nature; or, by consent of parties, may appoint
 an Auditor to investigate and report upon similar matters in dis-
 pute. Such Master or Auditor may subpoena witnesses, adminis-
 ter oaths, and hear testimony on any disputed fact, always giving
 due notice of his sittings to the parties or their solicitors.

Report and The report of the Master or Auditor, when returned
 exceptions. to Court, shall be subject to exceptions for such time as the Court
 may allow; and the exceptions so filed shall be the only issues
 of fact submitted to a jury, so far as the matters referred are con-
 cerned. When submitted, the jury shall return a verdict on each
 exception *seriatim*.

His fees. The fees of the Master or Auditor shall be determined
 by the Court, unless agreed on by the parties.

CHAPTER IV.

OF THE TRIAL AND ITS INCIDENTS.

SECTION.

4146. Trial term—when.

4147. Jury—when necessary.

4148. Rules of evidence and practice.

4149. Bill taken *pro confesso*.

SECTION.

4150. Decree for specific performance.

4151. Special verdicts and costs.

4152. New trials—appeals.

§ 4146. The trial term of all equity causes shall be the second term after service has been perfected on all the parties. Trial term.

§ 4147. When any question of fact is involved, the same shall be decided by a special jury, selected as in cases of appeals. If there be no such question, or the Master's report, unexcepted to, covers all such questions, the Judge may render a decree without the verdict of a jury. Jury trial
—when ne-
cessary.

§ 4148. The rules of evidence shall be the same as in trials at law, and the rules of practice as to continuance, and in the conduct of the cause before the jury, except that when a complainant relies solely on the defendant's answer, he shall be entitled to open and conclude the cause. Rules of evi-
dence and
practice.

§ 4149. If at the trial term no answer has been filed, and the complainant has not in his bill disclaimed discovery, and no sufficient excuse is rendered for the neglect of defendant, the facts charged in the bill shall be taken as confessed, so far as the complainant (or his solicitor in his absence) will swear that the same are true, or, according to his information and belief, must have been admitted to be true by the defendant in an honest answer; and the Court may proceed to decree thereon. The same rule shall be enforced against a complainant who fails or refuses to respond as to any matter set up in defendant's answer and of which discovery is sought from complainant. In proper cases the Court may compel an answer by attachment for contempt. Bill taken
pro confesso

§ 4150. A decree for specific performance shall operate as a deed to convey land or other property without any conveyance being executed by the vendor. Such decree, certified by the Clerk, shall be recorded in the registry of deeds in the County where the land lies, and shall stand in the place of a deed. Decree for
specific per-
formance.

§ 4151. Special verdicts may be found by the jury, and they may recommend to the Court the assessment of costs upon the respective parties. It is the province of the Chancellor, however, to determine upon whom the costs shall fall. Special
verdicts.

Costs.

Chapter 5.—Decrees and their Enforcement.

§ 4152. New trials may be granted from the verdicts of juries in equity cases in like manner as in cases at law. But there shall be no appeal from the verdict of the jury.

CHAPTER V.

OF DECREES AND THEIR ENFORCEMENT.

SECTION.

- 4153. A decree defined.
- 4154. Decrees and remedies.
- 4155. Decrees in vacation.
- 4156. Execution.
- 4157. Attachments for contempt.

SECTION.

- 4158. Transferable like judgments.
- 4159. Enforcing injunctions.
- 4160. Dormant decrees—revival.
- 4161. Limitation on bills of review.

§ 4153. A decree in Chancery is the judgment of the Chancellor upon the facts ascertained, and should be signed by him and entered on the minutes of the Court.

§ 4154. A Court of Equity has full power to mould its decrees so as to meet the exigencies of each case; and shall have full power to enforce its decrees when rendered.

§ 4155. [When for any reason already existing, or to exist, it becomes impossible to carry out any last will and testament, in whole or in part, the Judges of the Superior Courts shall have power to render at chambers during vacation any decree that may be necessary and legal in the premises; *provided* all parties interested consent thereto in writing, and there is no issue as to the facts; or if there is such an issue, there is a like consent in writing that the Judge presiding may hear and determine such facts, subject to a revision by the Supreme Court, as in other cases; *provided*, that in all cases where minors are interested, the consent of the guardian at law, or guardian *ad litem*, shall be obtained before such decree is rendered.] (a)

§ 4156. A decree in favor of any party for a specific sum of money, or for regular installments of money, shall be enforced by execution against the person or property as at law. The plaintiff in such execution shall be the person actually entitled without regard to his relative position in the cause. The defendant in such execution shall be entitled to all the privileges and defenses allowed to executions from a judgment at law.

§ 4157. Every decree or order of a Court of Equity may be enforced by attachment against the person for contempt, and if a

Chapter 6.—Other Proceedings in Chancery.

decree be partly for money and partly for the performance of a duty, the former may be enforced by execution, and the latter by attachment or other process. Attachment for contempt

§ 4158. A decree in equity is transferable like other judgments, and when for money shall have a like lien. Transfer. Lien.

§ 4159. Injunctions, *ne exeat*, prohibition, and other extraordinary remedies may be enforced also by attachment. Enforcing injunctions. 39 42 191

§ 4160. Decrees in equity for the payment of money shall become dormant like other judgments when not enforced, and may be revived upon petition and notice without a bill or writ of *scire facias*. Dormant decrees—revival.

§ 4161. Bills of review shall be brought within three years from the date of the decree rendered, or from the time of the removal of the disability of infancy, coverture, imprisonment, or insanity from the person complaining. Limitation on bills of review.

CHAPTER VI.

OF OTHER PROCEEDINGS IN CHANCERY.

SECTION.

4162. Proceedings by petition.

4163. What may be done at chambers.

SECTION.

4164. Notice—when necessary.

4165. To minors.

§ 4162. All proceedings *ex parte*, or in the execution of the protective powers of chancery over trust estates, or the estates of the wards of chancery, may be presented to the Court by petition only, and such other proceedings be had therein as the necessity of each cause shall demand. Proceedings by petition.

§ 4163. A Court of Equity is always open, and hence the Judge in vacation and at chambers, may receive and act upon such petitions, always transmitting the entire proceedings to the Clerk to be entered on the minutes or other records of the Court. What may be done at chambers.

§ 4164. In all cases of applications for the removal of trustees, or the sale of trust property, or the investment of trust funds, or similar cases where any person is interested besides the applicant, notice to such persons must be shown, or its absence accounted for before the Court shall proceed in the cause. Notice—when necessary.

§ 4165. If minors are interested, and they have no guardians, guardians *ad litem* must be appointed and notified before the cause proceeds. To minors.

TITLE XXVIII.

ARBITRATION AND AWARD.

CHAPTER 1.—*Special Provisions.*

CHAPTER 2.—*General Provisions.*

CHAPTER I.

SPECIAL PROVISIONS.

ARTICLE 1.—*Of the Submission.*

ARTICLE 2.—*Of the Organization and Hearing.*

ARTICLE 3.—*Of Continuances and Adjournments.*

ARTICLE 4.—*Of the Evidence and Witnesses.*

ARTICLE 5.—*Of the Powers of the Arbitrators.*

ARTICLE 6.—*Of the Rendition and Effects of the Award.*

ARTICLE 7.—*How Attacked.*

ARTICLE 8.—*Of Costs and Compensation of the Arbitrators.*

ARTICLE I.

OF THE SUBMISSION.

SECTION.

4166. Controversies submitted.

SECTION.

4167. Submission must be signed.

Controversy
submitted to
arbitration.

§ 4166. All persons having matters of controversy, whether in suit or otherwise, may submit the same to arbitration, and any personal representative of any decedent, or guardian of any infant, idiot, lunatic, or any trustee, may submit to arbitration any matter of controversy touching the estate or property of such decedent, idiot, lunatic, infant, or of such trust estate, in the following manner.

Submission
to be in writing.

§ 4167. All such submissions to arbitration shall be in writing, and shall contain a clear and accurate statement of the matters in controversy submitted, and any other matter that may be pertinent to said submission, and also the names of the arbitrators

Article 2.—The Organization and Hearing.

chosen by the parties. Said submission shall be signed by the parties or their agents, and, when so signed, shall be delivered to one of the arbitrators chosen by the parties; and when this is done, said submission shall be irrevocable, except by consent of all the parties.

ARTICLE II.

OF THE ORGANIZATION AND HEARING.

SECTION.

4168. Must be three arbitrators.
4169. How chosen.
4170. Shall appoint time and place.

SECTION.

4171. List of witnesses to be furnished.
4172. If any fail to attend.
4173. Arbitrators must be sworn.

§ 4168. Every arbitration under this provision of this Code shall be composed of three arbitrators, one of whom shall be chosen by each of the parties, and one by the arbitrators chosen by the parties. To consist of three.

§ 4169. When the submission is delivered to the arbitrators chosen by the parties, or either, such arbitrators shall then choose another arbitrator, whose name shall be inserted in the submission. How chosen

§ 4170. The arbitrators so chosen shall then appoint their time and place of meeting, which shall be as soon as practicable, consistent with a proper preparation of the case, and the parties shall have ten days' notice of such time and place of meeting. Time and place of meeting.

§ 4171. At the time the submission is made, or so soon thereafter as may be done, the parties shall furnish the arbitrators so chosen, or one of them, with a list of the witnesses whose testimony they desire to be before said arbitrators; and any party neglecting to do this for ten days after said submission is made, shall not be entitled to delay or continuance for the absence of his testimony or witnesses. List of witnesses to be furnished.

§ 4172. If any one of the arbitrators selected by the parties should fail to attend at the time and place of meeting, or be disqualified, the party whose arbitrator is absent or disqualified shall then choose another in his place; and if the arbitrator chosen by the arbitrators is absent or disqualified, the arbitrators chosen by the parties shall choose another in his place, and the arbitrators so chosen shall have all the powers of the arbitrators first chosen. One of the arbitrators failing to attend.

§ 4173. Before the arbitrators enter upon a hearing of said

Article 3.—Continuances and Adjournments.

Arbitrators must be sworn. case, to make up their award, they shall be sworn impartially to determine the matters submitted to them, according to law and the justice and equity of the case, without favor or affection to either party; which oath they may administer to each other.

ARTICLE III.

OF CONTINUANCES AND ADJOURNMENTS.

SECTION.

4174. Parties not ready—postponement.

SECTION.

4175. Adjournments.

Parties not ready—case postponed. § 4174. When, upon the meeting of the arbitrators, if either party shall not be ready for trial, the arbitrators may postpone the hearing of the case to a future day, which day shall be as early as may be consistent with the ends of justice, considering all the circumstances of the case. But there shall not be more than two adjournments of the case, except for providential cause.

May adjourn from day to day. § 4175. After the arbitrators shall have commenced their investigations, they may adjourn from day to day, or for a longer time, if the ends of justice require it, until their investigations are completed, and they have made up their award.

ARTICLE IV.

OF THE EVIDENCE AND WITNESSES.

SECTION.

4176. Testimony taken by commission.

4177. Competency of witness.

SECTION.

4178. Examination of witnesses, etc.

Testimony may be taken by commission. § 4176. Testimony may be taken by commission, under the same circumstances, in the same manner, and subject to the same rules and regulations, as are now or may be prescribed by law for the taking of testimony by commission in the Superior Courts, saving only that the original interrogatories shall be filed with one of the arbitrators and the commission issue by one of the arbitrators, and the testimony, when taken, shall be directed to the arbitrator who issued the commission.

Competency of witnesses. § 4177. All free white persons who have arrived at sufficient age to understand the obligations of an oath, and are not idiots or lunatics, including also the parties to said submission, shall be competent as witnesses in all cases before said arbitrators, saving

Article 5.—Powers of the Arbitrators.

only that the wife shall not be a witness for or against the husband, nor the husband for or against the wife, except in cases where the same is allowed by law.*

§ 4178. The examination of witnesses and the admission of testimony shall be governed by the rules of the Superior Courts, except as herein provided.

Examination of witnesses — admission of evidence.

ARTICLE V.

OF THE POWERS OF THE ARBITRATORS.

SECTION.

4179. Powers of arbitrators.

4180. May compel produc'n of books, etc.

SECTION.

4181. Administer oaths to witnesses, etc.

4182. If all do not attend two may act.

§ 4179. The arbitrators shall be clothed with all the powers of the Superior Courts to compel the attendance of witnesses before them, and also to compel them to testify, and any one of said arbitrators shall have power to issue subpoenas requiring the attendance of witnesses at the time and place of their meeting, which subpoenas shall be served in the manner pointed out by law for the service of subpoenas in cases pending in the Superior Courts, and witnesses so attending shall be entitled to the same compensation as witnesses attending Superior Courts, and it may be collected in the same manner.

May compel attendance of witnesses.

Compensation of witnesses.

§ 4180. Said arbitrators shall be clothed with all the powers of the Superior Courts to compel parties to produce books and all other papers which they may deem necessary and proper for the investigation of the matters submitted to them, giving to the party, his agent, or attorney, from whom the production is required, such notice as is required in the Superior Courts for the production of papers.

May compel the production of books, etc.

Notice to produce.

§ 4181. Said arbitrators shall have power to administer oaths to witnesses, and all other oaths that may be necessary for carrying the provisions of this Chapter into full effect.

May administer oaths.

§ 4182. If the arbitrators so chosen shall fail to agree upon an award, then any two of them may make an award, which shall have the same force and effect as if made by all three of them.

Two may make an award.

* As to competency of witnesses generally, see Sections 3798-9; and as to the competency of persons of color, see Sections 1662-3.

Article 6.—The Rendition and Effect of the Award.

ARTICLE VI.

OF THE RENDITION AND EFFECT OF THE AWARD.

SECTION 4183. Rendition and effect of award.

§ 4183. After the arbitrators shall have made up their award, they shall furnish each of the parties with a copy thereof, and return the original award to the next Superior Court of the County where the award was made, and said award shall be entered on the minutes of said Court, and shall have all the force and effect of a judgment or decree of said Court, and may be enforced in the same manner at any time after the adjournment of said Court, and shall be final and conclusive between the parties as to all matters submitted to the arbitrators, unless objection should be pleaded to the same as provided in the next Section of this Code.

Copy to be
given to the
parties; orig-
inal return-
ed to Super-
ior Court.

Effect of
award.

ARTICLE VII.

HOW ATTACKED.

SECTION.

4184. Award—how attacked, etc.

SECTION.

4185. Verdict of jury and proceedings.

§ 4184. When said award shall have been returned to said Court and entered upon its minutes, as provided in the previous Section of this Code, either of the parties may suggest, on oath, at the term to which said award is returned, that the award was the result of accident, or mistake, or the fraud of some one or all of the arbitrators or parties, or is otherwise illegal. Whereupon the Court shall cause an issue to be made up, which issue shall be tried by a special jury under the same rules and regulations as are prescribed for the trial of appeals; which trial shall be had at the same term of the Court at which the suggestion is made, unless good cause be shown for a continuance, when the same may be continued for one term only, except for providential causes.

Frauds may
be suggested
at the return
term.

Issue tried
by a special
term.

May be con-
tinued for
one term.

§ 4185. If upon the trial of such issue the jury shall return a verdict finding against said award on the specifications made in the issue submitted, the Court shall forthwith pass an order vacating and setting aside said award; but if the jury shall not so find, said award shall remain in full force as provided in the pre-

Verdict of
the jury.

Order of
the Court.

Article 8.—Costs and Compensation of Arbitrators.

vious Section of this Code, and shall be final and conclusive unless the judgment of the Superior Court on the trial of such issue be reversed by the Supreme Court. Shall be final unless reversed.

ARTICLE VIII.

OF COSTS AND COMPENSATION OF ARBITRATORS.

SECTION.

4186. Clerk's fees for his services.

4187. The costs may be taxed, etc.

SECTION.

4188. Compensation of arbitrators, etc.

§ 4186. For each award entered upon the minutes of the Superior Court, the Clerk shall be entitled to the same pay now allowed by law for the entering of judgment in other cases, to be paid by the parties as directed in said award. Clerk's fees.

§ 4187. The arbitrators shall return in their award the costs of the case, which they may tax against either party, or a part against one and a part against the other, according as they may think just and right. Costs—how taxed.

§ 4188. The arbitrators shall have such compensation for their services as may be agreed upon by themselves and the parties, which shall be paid equally by the parties, or included in the judgment or decree of the Court to which said award is returned as part of the costs in said case; and if the parties fail to agree on the amount so to be paid, the Court to which said award is returned shall direct an issue (as to the amount of the fee) to be formed between the parties and the arbitrators, which shall be tried by a special jury, whose verdict shall be final and conclusive, unless reversed, and the subsequent proceedings thereon shall be the same as in cases of appeal. Compensation of arbitrators—how fixed and collected.

CHAPTER II.

GENERAL PRINCIPLES.

SECTION.

4189. Any number of arbitrators.

SECTION.

4190. Submissions when suit is pending.

§ 4189. Nothing in the preceding Chapter contained shall prevent any of the parties named in the first Section thereof from submitting any and all matters of controversy to the arbitrament

Chapter 2.—General Principles.

Submis- and award of any number of arbitrators, as provided by this Code,
sions to arbi- whether the same be in suit or otherwise; and when so submitted,
tration other than those the proceedings shall be governed by the provisions of this Code
provided in the preced- and the common law.
ing chapter.

§ 4190. In all matters submitted to reference by parties in a
Submission when suit is pending. suit, under a rule of Court or other agreement in writing, signed
by the parties (except as hereinbefore provided), judgment shall
be entered up by the party in whose favor the award is given, and
execution shall issue for the sums awarded to be paid as they
respectively become due, and to be levied on the property of the
party against whom the judgment shall have been entered up, and
Proceedings therein. such other proceedings shall be had thereon by the Court as in
cases of judgments entered upon verdicts of juries.

TITLE XXIX.

PRACTICE IN CONNECTION WITH SUPREME COURT.

CHAPTER 1.—*Of Bills of Exceptions and Writs of Error.*

CHAPTER 2.—*Of Proceedings in Supreme Court.*

CHAPTER I.

OF BILLS OF EXCEPTIONS AND WRITS OF ERROR.

SECTION.

- 4191. When a writ of error lies.
- 4192. Bill of exceptions.
- 4193. Tendering and certifying.
- 4194. Exceptions *pendente lite*.
- 4195. Judge removing, dead, or absent.
- 4196. Death of either party.
- 4197. Judge refusing to certify.
- 4198. Failing to certify.
- 4199. Notice—how served.

SECTION.

- 4200. *Ex parte* proceedings,
- 4201. Criminal cases—proceedings in.
- 4202. Bill of exceptions—how filed.
- 4203. Operates as supersedeas—when.
- 4204. Clerks and Sheriffs failing in duty.
- 4205. Filing papers in the Supreme Court.
- 4206. Cases from City Courts.
- 4207. Change of laws apply.

§ 4191. No cause shall be carried to the Supreme Court upon
When a writ of error lies. any bill of exceptions, so long as the same is pending in the
Court below, unless the decision or judgment complained of, if
it had been rendered as claimed by the plaintiff in error, would
have been a final disposition of the cause. But at any stage of
the cause, either party may file his exceptions to any decision,

Chapter 1.—Bills of Exceptions and Writs of Error.

sentence, or decree of the Superior Court; and if the same is certified and allowed, it shall be entered of record in the cause; and should the case at its final termination be carried by writ of error to the Supreme Court by either party, error may be assigned upon such bills of exception, and a reversal and new trial may be allowed thereon when it is manifest that such erroneous decision of the Court has or may have affected the final result of the case.

Bills of exceptions pending the cause.

§ 4192. Either party in any civil cause, and the defendant in any criminal proceeding in the Superior Courts of this State, may except to any sentence, judgment, or decision, or decree, of such Court, or of the Judge thereof, in any matter heard at Chambers. Such bill of exceptions shall specify plainly the decision complained of, and the alleged error, and shall be signed by the party, or his attorney, or solicitor.

Bills of exceptions.

§ 4193. Such bill of exceptions shall be tendered to the Judge who presided in the cause, within thirty days from the adjournment of the Court, or the date of the decision at Chambers; and if the same is true and contains, in connection with the transcript of the record, all the facts necessary to the understanding and adjudication of the alleged error, the said Judge shall sign and certify the same, substantially as follows:

Tendering and certifying.

“I do certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of the County of ——— is hereby required and ordered to make out a complete copy of the record of said case, and certify the same as such, and cause the same to be transmitted to the ——— term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.”

Writ of error.

This certificate shall be the writ of error.

§ 4194. Exceptions tendered before the final hearing or judgment, for the mere purpose of being made a part of the record, shall be certified to be true by the Judge, and ordered to be placed on the record. Such exceptions must be tendered during the term.

Exceptions pending *pendente lite*.

§ 4195. If the Judge trying the cause resigns, or otherwise ceases to hold his office as Judge, when the bill of exceptions is tendered, he may nevertheless sign and certify as above; and if he should die before certifying the same, or otherwise becomes in-

Judge removing.

Chapter 1.—Bills of Exceptions and Writs of Error.

capable of acting, then the party may verify his bill of exceptions by his own oath, or that of his attorney, together with the oath of
 Or dying. at least one disinterested member of the bar who was present at the trial; and such verifications shall operate in the same manner as the certificate of the Judge. If the Judge is absent from
 Or absent, home, or by other casualty fails to certify the bill of exceptions etc. within the time specified (and without fault of the party tendering), he may still sign and certify as soon as possible, which shall be held and deemed valid.

§ 4196. If either party dies between the hearing and the tendering of the bill of exceptions, the Judge shall nevertheless sign and certify the same, and parties shall be made in the Supreme
 Party dying. Court as in other cases. The notices required in such cases to be given and received may be given and received by the attorneys of the respective parties, though such parties be dead.
 Notices.

§ 4197. If the Judge shall determine that the bill of exceptions is not true, or does not contain all the necessary facts, he shall
 Judge refusing to certify. return the same, within ten days, to the party, or his attorney, with his objections to the same in writing. If these objections are met and removed, the Judge may then certify, specifying in his certificate the cause of the delay. If the Judge sees proper, he may order notice to the opposite party of the fact and time of tendering the exceptions, and may hear evidence as to the truth thereof.
 Notice to other party.

§ 4198. If, from any cause, the bill of exceptions is not certified by the Judge without fault of the party tendering, such party, or his attorney, shall apply at the next term of the Supreme Court, wherever it may be, and, on petition, obtain from said
 Judge failing to sign. Court a *mandamus ni si*, directed to such Judge. Such petition must set out substantially the bill of exceptions tendered, and shall be verified by the attorney as to the truth of the bill as tendered, and by the party, or his attorney, as to the other facts stated therein. The *mandamus ni si* shall be served by some
 Service. Sheriff of this State, and his return made to the Clerk of the Supreme Court. It shall be returnable at some term of the Supreme Court, at which term the Court shall consider and determine the validity of the reasons given by the Judge for his failure or refusal; but in no case shall a traverse as to the truth of such return of the Judge be allowed. If the reasons be insufficient, or the Judge fails or refuses to make any return to the *man-*
 Judge's register. *damus*
 absolute.

Chapter 1.—Bills of Exceptions and Writs of Error.

damus ni si, the Supreme Court shall issue a *mandamus* absolute, commanding the Judge to sign and certify the bill of exceptions. If he still refuses so to do, the cause shall be heard by the Supreme Court on the exceptions as verified in the petition for *mandamus*.

§ 4199. Within ten days after the bill of exceptions is signed and certified, the party plaintiff therein shall serve a copy thereof upon the opposite party or his attorney, and if there be several parties with different attorneys, upon each, with a return of such service (or acknowledgment of service) indorsed upon or annexed to such bill of exceptions, and they alone are parties defendant in the Supreme Court who are thus served. Service of copy on defendants.

§ 4200. If the proceeding in the Court below be *ex parte*, and there is no opposite party, notice to no one is necessary. In cases of interpleader or otherwise, where the real contestant is not the opposite party on the record, notice shall be given to such real contestant, in addition to the copy served as above. Ex parte proceedings. Notice to real contestant.

§ 4201. In a criminal case, the copy bill of exceptions shall be served upon the Attorney or Solicitor General, as the case may be, or upon a Solicitor General *pro tem.* who tried the cause, if he is still acting under the appointment. In criminal cases.

§ 4202. Within fifteen days from the date of the certificate of the Judge, the bill of exceptions shall be filed in the office of the Clerk of the Court where the case was tried; and in ten days from the date of such filing, it shall be the duty of the Clerk to make out a copy of such bill, together with a complete transcript of the record in such cause. Such transcript, together with the original bill of exceptions, the Clerk shall transmit, together with a certificate that the same is the true original bill of exceptions, and a true and complete transcript of the record in such case, to the next term of the Supreme Court, as required in the Judge's certificate, directing the same to the Clerk of the said Court.* The copy bill of exceptions shall be retained in the office of the Clerk of the Superior Court. Filing in Clerk's office. Clerk's duty—transcript. Copy bill of exceptions.

§ 4203. The bill of exceptions thus filed shall operate as a *superse-deas* upon the plaintiff in error complying with the following terms: In a civil cause, the party shall, on or before filing the bill of exceptions, pay all costs, and by himself, his agent, or at- Superse-deas. In civil cases.

* See Acts of 1855-6, p. 200, as to whether the proviso in Section 8 of the Act of March 6th, 1856, is still in force.

Chapter 1.—Bills of Exceptions and Writs of Error.

Bond. torney in fact or at law, give bond with good security, payable to the opposite party, and conditioned for the payment of the eventual condemnation money, and all subsequent costs, which bond shall be attested and approved by the said Clerk. Or he may file an affidavit with the said Clerk, stating that he is unable, from his poverty, to pay the costs and give the security for the eventual condemnation money, and that his counsel has advised him that he has good cause for a writ of error, which affidavit shall operate as if the costs were paid and bond given. In a criminal cause, where the offense is bailable, the defendant shall enter into a recognizance before the said Clerk, with security to be approved by him, in a sum to be fixed by the presiding Judge, conditioned for the personal appearance of such defendant, to abide the final order, judgment, or sentence of said Court. If the offense is not bailable, the Judge shall order a *supersedeas* at the time of filing the bill of exceptions. If the party is unable, from his poverty, to give the recognizance, the Judge shall order a *supersedeas* upon the filing of an affidavit as provided in civil cases, but the defendant shall not be set at liberty without the recognizance.

§ 4204. If any Sheriff, or Clerk, or other officer shall fail to discharge any duty required of him in connection with the foregoing provisions, upon petition the Supreme Court, or the Judge of the Superior Court, may compel the performance of such duty by *mandamus*; and no suitor shall lose any right by reason of the failure of such officers to discharge their duties, where he has been guilty of no fault himself, and has exercised ordinary diligence to secure their discharge of duty.

§ 4205. [All bills of exceptions, taking up cases for review before said Court, shall be filed in the Clerk's office at least twenty days before the commencement of the term at which the same is to be heard—to wit: The first Monday in June and December; otherwise the case shall be docketed for the term held next after filing the same.] (a)

§ 4206. [The mode now prescribed by law for carrying cases from the Superior Courts to the Supreme Court, shall obtain in, and apply to, the City Courts of the cities of Savannah and Augusta, and such other like Courts as may be hereafter established; and the Judges, Clerks, and Sheriffs of such inferior judicatories, are

Chapter 2.—Proceedings in the Supreme Court.

hereby authorized and required to do and perform all the acts in relation to carrying cases from their respective Courts, which are now performed or required of like officers of the Superior Courts where cases are carried from the Superior Courts.] (a) Duty of Judges and officers.

§ 4207. [Any change or modification in the mode of carrying cases from the Superior Courts to the Supreme Court, which may hereafter be made, shall apply to and govern such inferior judicatories, *mutatis mutandis*, although they may not be specially named.] (a) Changes made shall apply to city Courts.

CHAPTER II.

OF PROCEEDINGS IN THE SUPREME COURT.

SECTION.

- 4208. Order of docketing cases.
- 4209. Number to be published.
- 4210. Mode of decision.
- 4211. Decisions at the first term.
- 4212. Written arguments.
- 4213. Time of filing brief.
- 4214. Argument to be read.
- 4215. Costs must be paid.
- 4216. Making parties.
- 4217. If the record is incomplete.

SECTION.

- 4218. Judges dissenting.
- 4219. Decision and future direction.
- 4220. Remitter.
- 4221. Damages.
- 4222. Execution may issue—when.
- 4223. Amendments.
- 4224. Transcript to be filed.
- 4225. Attorneys liable for costs.
- 4226. Taxing cost.

§ 4208. [It shall be the duty of the Judges of the Supreme Court to fix, and cause to be published on the first of January, 1867, for twenty days, in one newspaper in Augusta, Savannah, Atlanta, Macon, and Columbus, and in the *Southern Recorder* and *Federal Union* at Milledgeville, the order in which the cases from the respective Judicial Circuits will be heard, which shall not be changed, except by an order of the Court, published in the same manner at least sixty days before the term of the Court at which the alteration is to take effect.] (b) Order of cases by circuit to be published.

§ 4209. [It shall be the duty of the Clerk of the Supreme Court to cause to be published, in the manner specified in the preceding Section, for fifteen days immediately preceding each session of said Court, the number of cases docketed from each Court in each Circuit, for the information of all persons having business in said Court.] (b) Number of cases from each circuit to be published

§ 4210. [No decision shall be delivered *ore tenus*; but the same shall be announced by a written synopsis of the points decided, Mode of announcing decisions.

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which shall be delivered during the term at which the decision was made. And no decision shall be published in the reports until the said decision shall have been revised by each of the Judges presiding in the case.] (a)

Decisions at first term. § 4211. The Supreme Court shall proceed to hear at the first term (unless prevented by providential cause) all cases properly docketed, and with the records made up ready for a hearing. And no continuance shall be allowed except for providential cause.

Attorneys may agree in writing. § 4212. [Attorneys and solicitors who have, or may have causes pending in the Supreme Court, may argue the same in writing as hereinafter set forth.] (b)

Send written argument to Clerk. § 4213. [When any attorney or solicitor shall from any cause desire to make his argument in writing, he shall prepare the same, and address the package containing it to the Clerk of the Supreme Court of Georgia, which said written argument shall be filed in the Clerk's office of said Court, by or before the commencement of the term to which it is made returnable.] (b)

Duty of Clerk. Of Court. § 4214. [It shall be the duty of said Clerk when the cause is sounded to furnish the Court with said argument; which argument it shall be the duty of the Court to read, or cause the same to be done.] (b)

Costs. § 4215. [It shall be the duty of the attorney or solicitor for the plaintiff in error, when forwarding his argument in writing to furnish a sum sufficient to pay the costs of said suit, and in default thereof, his cause shall be liable to be dismissed.] (b)

Making parties. § 4216. Should any party die after the bill of exceptions has been signed and certified, the death being suggested of record in the Supreme Court, parties shall be made by *scire facias*, in the manner heretofore prescribed by the rules of said Court.

If the record is incomplete. § 4217. If the transcript of the record is incomplete in a material point, the fact being suggested on the oath of the party or his counsel, the cause shall be postponed, and a *mandamus* issued requiring the Clerk to complete the transcript. If, however, the other party will admit the existence and effect of the omitted record, such admission in writing shall constitute a part of the record, and the cause shall proceed to a hearing. If the Clerk refuses to send up any of the papers, the plaintiff in error, or his counsel, may apply to any one of the Judges of the Supreme

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Court in vacation and obtain a *mandamus ni si* against said Clerk, and returnable to the term of the Court where the case should be tried; and for a continued failure or refusal, the Supreme Court may attach the Clerk for contempt. Attachment for contempt

§ 4218. If the Court is not unanimous in its decisions, the Judges shall deliver the opinions *seriatim*, but they shall not be required to write them out. The opinion of the majority shall decide each question. If but two judges preside, and they are divided in opinion, the cause shall be re-argued before the remaining Judge, with a full bench, ere the term closes, if possible. If not possible, the judgment of the Court below shall stand affirmed, upon the certificate of the fact of the division of the Court, unless the Judge is absent from providential cause, in which event the cause shall stand continued. Judges dissenting.

§ 4219. The decision in each cause shall be entered on the minutes, and it shall be within the power of the Supreme Court to award such order and direction to the cause in the Court below as may be consistent with the law and justice of the case. Decision.
Power of future direction.

§ 4220. The decision of the Court, and any direction awarded in the case, shall be certified by the Clerk to the Court below, under the seal of the Supreme Court, and shall be respected, and in good faith carried into full effect, by the Superior Court. The remitter shall contain nothing more, except the costs paid in the Supreme Court. Remitter.

§ 4221. Ten per cent. damages may be awarded by the Supreme Court upon any judgment for a sum certain, which has been carried to said Court, and there affirmed; *provided*, in their opinion, the cause was taken up for delay only, and it shall be so entered in the remitter. Damages in cases of affirmation.

§ 4222. If the judgment below is affirmed, upon filing the remitter with the Clerk of the Superior Court in vacation, the supersedeas shall cease, and execution shall issue at once for the amount of the original judgment. Judgment affirmed, execution at once.

§ 4223. The bill of exceptions may be amended in the Supreme Court, so as to conform to the record in the cause. Bill of exceptions amendable.

§ 4224. The transcript of the record shall not be recorded by the Clerk of the Supreme Court, but shall be carefully labeled and filed, so as to be easily found when needed. Transcripts to be filed.

Chapter 2.—Proceedings in the Supreme Court.

§ 4225. The attorney representing the plaintiff's cause shall, in all cases, be responsible for the costs in the Supreme Court. If there is a judgment of reversal, the plaintiff in error shall be entitled to a judgment for the amount of such costs against the defendant in error, so soon as the remitter is returned to the Court below.

§ 4226. At the close of each judgment on the minutes, the Clerk shall tax his costs, subject to revision by the Judges of the Supreme Court, and the costs so taxed shall be entered as a part of the remitter.

Attorney
liable for
costs.

Judgment
against other
party.

Taxing costs

PART IV.

PENAL LAWS.

TITLE I.

PENAL CODE.

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DIVISION 2.—*Principals and Accessories.*
DIVISION 3.—*Crimes Against the State and People.*
DIVISION 4.—*Crimes Against the Person.*
DIVISION 5.—*Crimes Against the Habitation.*
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FIRST DIVISION.

PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION.

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4231. Lunatics.
4232. Idiots.
4233. Aiders and abettors instead.

SECTION.

4234. If insanity is pleaded.
4235. Married women.
4236. Drunkenness—when excuse.
4237. Misfortune or accident.
4238. Persons under fear.
4239. Felony—what is.

§ 4227. A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence.

What persons capable of committing crimes.

§ 4228. Intention will be manifested by the circumstances con-

Division 1.—Persons Capable of Committing Crimes.

Intention. nected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Stacks 6 § 4229. A person shall be considered of sound mind, who is neither an idiot, a lunatic, or afflicted by insanity, or who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infants of fourteen capable.

§ 4230. An infant under the age of ten years, whose tender age renders it improbable that he or she should be impressed with a proper sense of moral obligation, or be possessed of sufficient capacity deliberately to have committed the offense, shall not be considered or found guilty of any crime or misdemeanor.

Under ten, according to capacity, etc.

§ 4231. A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he or she may be charged; *provided*, the act so charged as criminal, was committed in the condition of such lunacy or insanity; but if a lunatic hath lucid intervals of understanding, he shall answer for what he does in these intervals as if he had no deficiency.

Lunatics.

§ 4232. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

Idiots.

§ 4233. Any person counseling, advising, or encouraging an infant under the age of ten years, a lunatic or an idiot, to commit an offense, shall be prosecuted for such offense when committed, as principal; and if found guilty, shall suffer the same punishment as would have been inflicted on said infant, lunatic, or idiot, if he or she had possessed discretion and been found guilty.

Their counselors and instigators punishable in their stead

§ 4234. Whenever the plea of insanity is filed, it shall be the duty of the Court to cause the issue on that plea to be first tried by a special jury, and if found to be true, the Court shall order the defendant to be delivered to the Superintendent of the Asylum, there to remain until discharged by the General Assembly.

Plea of insanity—how tried.

§ 4235. A *feme covert*, or married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable by death or perpetual imprisonment; and, with this exception, the husband

Married women—if coerced not punishable.

shall be prosecuted as principal, and, if convicted, shall receive the punishment which otherwise would have been inflicted on the wife, if she had been found guilty; *provided* it appears, from all the facts and circumstances of the case, that violent threats, command, and coercion, were used.

But their husbands in their stead.

Division 1.—Persons Capable of Committing Crimes.

§ 4236. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness was occasioned by the fraud, artifice, or contrivance, of other person or persons, for the purpose of having a crime perpetrated; and then the person or persons so causing said drunkenness, for such malignant purpose, shall be considered a principal, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she, or they, had been possessed of sound reason and discretion.

Voluntary
drunkenness
no excuse.

If caused by
others, such
others pun-
ishable.

§ 4237. A person shall not be found guilty of any crime or misdemeanor committed by misfortune or accident, and where it satisfactorily appears there was no evil design, or intention, or culpable neglect.

Misfortune
or accident.

§ 4238. A person committing a crime or misdemeanor under threats or menaces, which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did actually believe, that his or her life or member was in danger, shall not be found guilty; and such threats and menaces being proved and established, the person or persons compelling, by said threats and menaces, the commission of the offense, shall be considered a principal or principals, and suffer the same punishment as if he, she, or they, had perpetrated the offense.

Persons act-
ing under
fear not pun-
ishable.

§ 4239. The term "*felony*," when used in this Code, shall be construed to mean an offense, for which the offender, on conviction, shall be liable by law to be punished by death or imprisonment in the Penitentiary, and not otherwise.

Meaning of
the word
"felony."

SECOND DIVISION.

PRINCIPALS AND ACCESSORIES IN CRIME.

SECTION.

4240. Principals, first and second degree.
4241. Accessories.
4242. Before the fact.

SECTION.

4243. After the fact.
4244. Punishment of each.
4245. Of accessory after the fact.

§ 4240. A person may be principal in an offense in two degrees. A principal in the first degree is he or she that is the actor or absolute perpetrator of the crime. A principal in the second degree is he or she who is present, aiding and abetting the act to be done; which presence need not always be an actual immediate standing

Principal in
first degree.

Principal in
second de-
gree.

Division 2.—Principals and Accessories in Crime.

by, within sight or hearing of the act; but there may be also a constructive presence, as when one commits a robbery, or murder, or other crime, and another keeps watch or guard at some convenient distance.

§ 4241. An accessory is one who is not the chief actor in the offense, nor present at its performance, but is some way concerned therein, either *before* or *after* the act committed.

Accessory before the fact. § 4242. An accessory before the fact is one who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime.

Accessory after the fact. § 4243. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists, or protects the person charged with or convicted of the crime.

Punishment of principal in second degree. § 4244. A principal in the second degree and an accessory before the fact, except where it is otherwise provided for in this Code, shall receive the same punishment as is directed to be inflicted on the principal in the first degree, or perpetrator of the crime.

Punishment for accessories after the fact. § 4245. Accessories after the fact, except where it is otherwise ordered in this Code, shall be punished by [a fine, not to exceed one thousand dollars; imprisonment, not to exceed six months; whipping, not to exceed thirty-nine lashes; to work in a chain gang on the public works, not to exceed twelve months; and any one or more of these punishments may be ordered in the discretion of the Judge.] (a)

THIRD DIVISION.

CRIMES AGAINST THE STATE AND PEOPLE.

SECTION.

- 4246. Treason and insurrection.
- 4247. Treason, first degree.
- 4248. Treason, second degree.
- 4249. Insurrection.

SECTION.

- 4250. Attempt to incite.
- 4251. Punishment.
- 4252. Insurrectionary papers.

Insurrection § 4246. Crimes against the State and the people shall consist in treason in the first degree and second degree, exciting, or attempting to excite, an insurrection.

§ 4247. Treason in the first degree shall consist in levying war

Division 3.—Crimes Against the State and People.

against the State in the same, or being adherent to the enemies of the State within the same. giving to them aid and comfort in this State or elsewhere, and thereof being legally convicted of open deed, by two or more witnesses, or other competent and credible testimony, or voluntary confession; these cases shall be adjudged treason against the State and people; and when the overt act of treason shall be committed without the limits of this State, the person charged therewith may be arrested and tried in any County in this State, within the limits of which he may be found, and, being thereof convicted, shall be punished in like manner as if the said treason had been committed and done within the limits of said County. Treason in the first degree shall be punished with death, [but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (a)

Treason in the first degree.

Punishment, death.

§ 4248. Treason in the second degree shall consist in the knowledge and concealment of treason, without otherwise assenting to or participating in the same. The punishment of treason in the second degree shall be confinement and hard labor in the penitentiary for four years.

Treason in second degree.

Penitentiary four years.

§ 4249. [Insurrection shall consist in any combined resistance to the lawful authority of the State, with intent to the denial thereof, when the same is manifested, or intended to be manifested, by acts of violence.] (b)

Insurrection

§ 4250. [Any attempt, by persuasion, or otherwise, to induce others to join in any combined resistance to the lawful authority of the State, shall constitute an attempt to incite insurrection.] (b)

Attempt to incite insurrection.

§ 4251. [Any person convicted of the offense of insurrection, or an attempt at insurrection, shall be punished with death; or, if the jury recommend to mercy, confinement in the penitentiary for a term not less than five nor more than twenty years.] (b)

Punishment of insurrection.

§ 4252. [If any person shall bring, introduce, permit, or circulate, or cause to be introduced, circulated, or permitted, or aid or assist, or be in any manner instrumental in bringing, introducing, circulating, or printing within this State, any paper, pamphlet, circular, or any writing, for the purpose of exciting insurrection, riot, conspiracy, or resistance against the lawful authority of the State, or against the lives of the inhabitants thereof, or any part of them, such person or persons so offending shall be guilty of a

Circulating insurrectionary papers.

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

Punishment high misdemeanor, and on conviction shall be punished by confinement in the penitentiary for a term not less than five nor longer than twenty years.] (a)

FOURTH DIVISION.

CRIMES AND OFFENSES AGAINST THE PERSONS OF CITIZENS OR INDIVIDUALS.

SECTION.

- 4253. Homicide.
- 4254. Murder.
- 4255. Express malice.
- 4256. Implied malice.
- 4257. Punishment of murder.
- 4258. Manslaughter.
- 4259. Voluntary.
- 4260. Punishment.
- 4261. Involuntary.
- 4262. Punishment.
- 4263. Fine and imprisonment.
- 4264. Justifiable homicide.
- 4265. Reasonable fear.
- 4266. Invasion of property.
- 4267. Self-defense.
- 4268. Other cases.
- 4269. No punishment.
- 4270. Advisers to infanticide.
- 4271. Concealment of child.
- 4272. Fine and imprisonment.
- 4273. Mayhem.
- 4274. Specification.
- 4275. Tongue—punishment.
- 4276. One eye—punishment.
- 4277. Only one eye, or both eyes.
- 4278. Nose—punishment.
- 4279. Ear or lip—punishment.
- 4280. Castration—punishment.

SECTION.

- 4281. Wounding privates.
- 4282. Other mayhems.
- 4283. Rape.
- 4284. Punishment.
- 4285. Assault with intent.
- 4286. Sodomy.
- 4287. Punishment.
- 4288. Bestiality.
- 4289. Punishment.
- 4290. Attempt.
- 4291. Assault.
- 4292. Punishment.
- 4293. With intent to rob.
- 4294. Punishment.
- 4295. With intent to injure clothes.
- 4296. Battery.
- 4297. False imprisonment.
- 4298. Without process.
- 4299. Under color of process.
- 4300. Kidnapping.
- 4301. Inveigling children.
- 4302. Assault with intent to murder.
- 4303. Stabbing.
- 4304. Shooting.
- 4305. Seduction.
- 4306. Using abusive or obscene language.
- 4307. Abandonment of children.

Homicide. § 4253. Homicide is the killing of a human being, of any age or sex, and is of three kinds—murder, manslaughter, and justifiable homicide.

Murder. § 4254. Murder is the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice. § 4255. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

(a) Acts of 1866, pp. 152-3.

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22 " 545
26 " 275

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

§ 4256. Malice shall be implied where no considerable provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart. Implied malice.

§ 4257. The punishment of murder shall be death, but may be confinement in the Penitentiary for life in the following cases: Murder—death.
 1. By sentence of the presiding Judge, if the conviction is founded solely on circumstantial testimony, or if the jury trying the traverse shall so recommend. In the former case, it is discretionary with the Judge; in the latter, it is not. 2. By act of the General Assembly. 35 Ga 5

§ 4258. Manslaughter is the unlawful killing of a human creature, without malice, either express or implied, and without any mixture of deliberation whatever, which may be voluntary, upon a sudden heat of passion; or involuntary, in the commission of an unlawful act, or a lawful act, without due caution and circumspection. Manslaughter.

§ 4259. In all cases of voluntary manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing, or other equivalent circumstances to justify the excitement of passion, and to exclude all idea of deliberation or malice, either express or implied. Provocation by words, threats, menaces, or contemptuous gestures, shall in no case be sufficient to free the person killing from the guilt and crime of murder. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should have been an interval between the assault or provocation given and the homicide, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder. Voluntary manslaughter.

§ 4260. Voluntary manslaughter shall be punished by confinement and labor in the Penitentiary for a term not less than one nor longer than twenty years. Punishment

§ 4261. Involuntary manslaughter shall consist in the killing of a human being without any intention to do so, but in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner: *provided, always*, that where such involuntary killing shall happen in the commission of an unlawful act which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the Involuntary manslaughter.

See 38 Ga 107 on this and the note to 4263 as to the finding by the jury of involuntary manslaughter simply; also 22 Ga 101.

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

prosecution of a riotous intent, or of a crime punishable by death or confinement in the Penitentiary, the offense shall be deemed and adjudged to be murder.

Punishment

§ 4262. Involuntary manslaughter, in the commission of an unlawful act, shall be punished by confinement and labor in the penitentiary for a term not less than one nor longer than three years.

Punishment

§ 4263. Involuntary manslaughter, in the commission or performance of a lawful act, where there has not been observed necessary discretion and caution, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Justifiable homicide.

§ 4264. There being no rational distinction between excusable and justifiable homicide, it shall no longer exist. Justifiable homicide is the killing of a human being by commandment of the law in execution of public justice; by permission of the law in advancement of public justice; in self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors by violence or surprise, to commit a felony on either; or against any persons who manifestly intend and endeavor, in a riotous and tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Fear, to be an excuse, must be reasonable.

§ 4265. A bare fear of any of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in defense.

§ 4266. If, after persuasion, remonstrance, or other gentle measures used, a forcible attack and invasion on the property or habitation of another can not be prevented, it shall be justifiable homicide to kill the person so forcibly attacking and invading the property or habitation of another; but it must appear that such killing was absolutely necessary to prevent such attack and invasion, and that a serious injury was intended, or might accrue to the person, property, or family of the person killing.

§ 4267. If a person kill another in his defense, it must appear that the danger was so urgent and pressing at the time of the

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

killing, that in order to save his own life, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

The danger must be urgent.

22 " 75
25 " 699
18 " 702

§ 4268. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be justifiable homicide.

All other instances.

§ 4269. The homicide appearing to be justifiable, the person indicted shall, upon the trial, be fully acquitted and discharged.

Justifiable homicide not punished.

§ 4270. If any person shall counsel, advise, or direct a woman to kill the child she is pregnant or goes with, and after she is delivered of such child, she kill it, every such person so advising or directing, shall be deemed an accessory before the fact to such murder, and shall have the same punishment as the principal.

Advisers to kill infants.

§ 4271. The constrained presumption arising from the concealment of the death of any child, that the child whose death is concealed, was therefore murdered by the mother, shall not be sufficient or conclusive evidence to convict the person indicted of the murder of her child, unless probable proof be given that the child was born alive, nor unless the circumstances attending it shall be such as shall satisfy the minds of the jury that the mother did willfully and maliciously destroy and take away the life of such child.

Concealment of child's death.

§ 4272. If any woman shall conceal or attempt to conceal the death of any issue of her body, male or female, which, if it were born alive, would, by law, be a bastard, so that it may not come to light whether it was murdered or not, every such mother being convicted thereof, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Punishment.

§ 4273. Mayhem shall consist in unlawfully depriving a person of a member, or disfiguring, or rendering it useless.

Mayhem.

§ 4274. If any person shall unlawfully, and without sufficient cause or provocation, cut out or disable the tongue, put out an eye, slit or bite the nose, ear or lip, or cut or bit off the nose, ear or lip, or castrate, or cut, or bite off, or disable any other limb or member of another, with an intention in so doing to maim or disfigure such person, or shall voluntarily, maliciously, and of pur-

In what it consists.

59a 404

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

pose, while fighting or otherwise, do any of these acts, every such person shall be guilty of mayhem.

Cutting the
tongue—
penitentiary
five to fif-
teen years.

§ 4275. A person convicted of cutting out the tongue, with the intention, or voluntarily, or maliciously, as expressed in the preceding Section, shall be punished by confinement and labor in the penitentiary for life. A person convicted of disabling the tongue, with the intention, or voluntarily, or maliciously, as expressed in the preceding Section, shall be punished by confinement and labor in the penitentiary for a term not less than five years, nor more than fifteen years.

3310 Code
Putting out
one eye—
punishment.

§ 4276. A person convicted of putting out an eye with the intention, or voluntarily, or maliciously, as before expressed, in fight or otherwise, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Both eyes
or the only
eye—peni-
tentiary for
life.

§ 4277. A person convicted of putting out the eyes of another, or the eye of another having but one eye, with a similar intention, or voluntarily, or maliciously, while fighting, or otherwise, shall be punished by confinement and labor in the penitentiary for and during the term of his or her natural life.

Slitting or
biting nose—
punishment.

§ 4278. A person convicted of slitting or biting the nose, ear or lip of another, with the intention, or voluntarily, or maliciously, as before expressed, while fighting, or otherwise, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Cutting or
biting off the
nose, ear, or
lip—punish-
ment.

§ 4279. A person convicted of cutting or biting off the nose, ear, or lip of another, with the intention, or voluntarily, or maliciously, as before expressed, while fighting or otherwise, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Castration
—death.

§ 4280. A person convicted of the crime of castrating another, with the intention, or voluntarily, or maliciously, as before expressed, while fighting or otherwise, shall be punished with death, [but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (b)

Wounding
in a less de-
gree—peni-
tentiary five
to fifteen
years.

§ 4281. A person convicted of willfully and maliciously injuring, wounding, or disfiguring the private parts of another, with the intention aforesaid, whilst fighting or otherwise, which injuring, wounding or disfiguring, do not amount to castration, shall be punished by confinement and labor in the penitentiary for a term not less than five years nor longer than fifteen years.

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§ 4282. A person convicted of cutting or biting off, or disabling any limb or member of another, not hereinbefore designated, with the intention, or voluntarily, or maliciously, as before expressed, while fighting or otherwise, shall be punished [as prescribed in Section 4245 of this Code.] (a) Other may-hems.

§ 4283. Rape is the carnal knowledge of a female, forcibly and against her will. Rape.

§ 4284. [The crime of rape in this State shall be punished with death, unless the defendant is recommended to mercy by the jury, in which case the punishment shall be the same as for an assault with intent to commit a rape.] (b) Punishment

§ 4285. An assault with intent to commit a rape shall be punished by an imprisonment at [hard] (b) labor in the penitentiary [of this State] (b) for a term not less than one year nor longer than [twenty] (b) years. Assault with intent of rape.

§ 4286. Sodomy is the carnal knowledge and connection against the order of nature, by man with man, or in the same unnatural manner with woman. Sodomy.

§ 4287. The punishment of sodomy shall be imprisonment at labor in the penitentiary for and during the natural life of the person convicted of this detestable crime. Penitentiary for life.

§ 4288. Bestiality is the carnal knowledge and connection against the order of nature by man or woman in any manner with a beast. Bestiality.

§ 4289. The punishment of bestiality shall be imprisonment at labor in the penitentiary for and during the natural life of the person convicted of this detestable crime. Penitentiary for life.

§ 4290. An attempt to commit sodomy or bestiality shall be punished [as prescribed in Section 4245 of this Code.] (a) Attempt.

§ 4291. An assault is an attempt to commit a violent injury on the person of another. Assault.

§ 4292. A bare assault shall be punished [as prescribed in Section 4245 of this Code.] (a) Punishment.

§ 4293. An assault with intent to murder, by using any weapon likely to produce death, shall be punished by imprisonment and labor in the penitentiary for a term not less than two years nor longer than ten years. Assault with intent to murder—penitentiary two to ten years.

§ 4294. An assault with intent to rob is where any person or

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

Assault with
intent to rob.

persons shall, with any offensive or dangerous weapon or instrument, unlawfully and maliciously assault another, or shall, by menaces, or in and by any forcible or violent manner, demand any money, goods, or chattels, of or from any other person or persons, with intent to commit robbery upon such person or persons.

Penitentiary
two to four
years.

§ 4295. A person convicted of an assault with intent to rob shall be punished by confinement and labor in the penitentiary for a term not less than two years nor more than four years.

Assault
to injure
clothes—
punishment.

§ 4296. An assault with an intent to spoil or injure clothes or garments, is where any person or persons shall, at any time, willfully and maliciously assault any person or persons, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn, or deface the garments or clothes of such person or persons; and every such offender, being thereof convicted, shall be punished [as prescribed in Section 4245 of this Code.] (a).

Battery.

§ 4297. Battery is the unlawful beating of another, and shall be punished [as prescribed in Section 4245 of this Code.] (a)

False im-
prisonment.

§ 4298. False imprisonment is a violation of the personal liberty of a person, or citizen, and consists in confinement or detention of such person, without sufficient legal authority.

False im-
prisonment,
—fine, etc.

§ 4299. Any person who shall arrest, confine, or detain a person or citizen, without process, warrant, or legal authority to justify it, shall be punished [as prescribed in Section 4245 of this Code.] (a)

When under
color of legal
process.

§ 4300. The arrest, confinement, or detention of a person or citizen, by the warrant, mandate, or process of a magistrate, being manifestly illegal, and showing malice and oppression, the said magistrate shall be removed from office; and such magistrate, and all and every person and persons, knowingly and maliciously concerned therein, shall be punished by fine and imprisonment in the common jail of the County, or imprisonment and labor in the penitentiary for any time not less than one nor more than two years, at the discretion of the Court.*

Kidnap-
ping—peni-
tentiary four
to seven
years.

§ 4301. Kidnapping is the forcible abduction or stealing away of any person, without lawful authority, or warrant, from this State or any County thereof, and sending or conveying such person beyond the limits of said State or County against his or her will. Each and every person who shall be guilty of this crime,

* See Section 4608. (a) Acts of 1865-6, p. 232.

Division 4.—Crimes and Offenses Against the Persons of Citizens or Individuals.

and be thereof lawfully convicted, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than seven years.

§ 4302. If any person shall forcibly, maliciously, or fraudulently lead, take, or carry away, or decoy, or entice away, out of the limits of this State, or any County thereof, any child under the age of twelve years, from its parent or guardian, or against his, her, or their will or wills, and without his, her, or their consent or consents, such person so offending shall be indicted for kidnapping, and on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than four nor more than seven years.

Inveigling
white chil-
dren — peni-
tentiary four
to seven
years.

§ 4303. Any person who shall be guilty of the act of stabbing another, except in his own defense, or other circumstances of justification, with a sword, dirk, or knife, or other instrument of the like kind, shall, on conviction, be punished [as prescribed in Section 4245 of this Code;] (a) *provided, always*, that if such stabbing shall produce death, the offender shall be guilty of murder or manslaughter, according to the facts and circumstances of the case; or if such stabbing shall not produce death, and the facts and circumstances show that it was the intention of the person stabbing to commit the crime of murder, then and in such case, the offender shall be guilty of the offense of an assault with intent to commit murder.

Stabbing—
punishment.

Proviso.

§ 4304. Any person who shall be guilty of the offense of shooting at another (except in his own defense or under circumstances of justification according to the principles of this Code), with a gun, pistol, or other instrument of the like kind, shall be punished by a fine not exceeding one thousand dollars, and imprisonment in the common jail not less than twelve months, or confinement in the penitentiary not less than one nor more than four years, in the discretion of the Court.*

Shooting
at another.

§ 4305. If any person shall, by persuasion and promises of marriage, or other false and fraudulent means, seduce a virtuous unmarried female, and induce her to yield to his lustful embraces, and allow him to have carnal knowledge of her, such person, on conviction, shall be punished by imprisonment and labor in the penitentiary for a term not less than two nor longer than twenty years. The prosecution may be stopped at any time by the mar-

Seduction

(a) Acts of 1865-6, p. 233. * See Section 4608.

Division 5.—Crimes and Offenses Against the Habitations of Persons.

riage of the parties, or a *bona fide* and continuing offer to marry on the part of the seducer.

Using abusive or obscene language.

§ 4306. Any person who shall, without provocation, use to or of another, and in his presence, opprobrious words, or abusive language tending to cause a breach of the peace, or who shall in like manner, use obscene and vulgar language in the presence of a female, shall be guilty of a misdemeanor, and on conviction shall be [punished as prescribed in Section 4245 of this Code.] (a)

Abandonment of children.

§ 4307. [If any father shall willfully and voluntarily abandon his child, or children, leaving them in a dependent or destitute condition, such father shall be guilty of a misdemeanor, and on conviction thereof shall be punished as for other misdemeanors.] (b) *

FIFTH DIVISION.

CRIMES AND OFFENSES AGAINST THE HABITATIONS OF PERSONS.

SECTION.

- 4308. Crimes against habitations.
- 4309. Arson.
- 4310. In a town.
- 4311. Elsewhere.
- 4312. Attempt.
- 4313. Out-house not in town.
- 4314. Setting fire to.
- 4315. Burning—what is.

SECTION.

- 4316. Setting fire—what is.
- 4317. Burning railroad bridge.
- 4318. Arson—day and night.
- 4319. Causing death.
- 4320. Burglary.
- 4321. In the day.
- 4322. In the night.

Crimes against habitations.

§ 4308. Crimes against the habitations of individuals shall consist of—1st, Arson; 2d, Burglary.

Arson.

§ 4309. Arson is the malicious and willful burning of the house or out-house of another.

Death, if in a city or village.

§ 4310. The willful and malicious burning, or setting fire to, or attempting to burn a house in a city, town, or village, shall be punished with death, [but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (c)

Elsewhere—penitentiary five to twenty years.

§ 4311. The willful and malicious burning of [an occupied] (d) dwelling-house of another on a farm or plantation, or elsewhere, shall be punished [with death] (d) [but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (c)

(a) Acts of 1865-6, p. 233. (b) Acts of 1866, p. 151. * See Section 4608.
(c) Acts of 1866, p. 150. (d) Acts of 1865-6, p. 232.

Division 5.—Crimes and Offenses Against the Habitations of Persons.

§ 4312. Setting fire to the dwelling-house of another, with intent to burn the same, on a farm, or plantation, or elsewhere (not in a city, town, or village), shall be punished by imprisonment and labor in the penitentiary for a term not less than three years, nor longer than seven years.

Attempt—
penitentiary
three to seven
years.

§ 4313. The willful and malicious burning of an out-house of another, such as a barn, stable, or any other house (except the dwelling-house) on a farm or plantation, or elsewhere, (not in a city, town, or village), shall be punished by imprisonment and labor in the penitentiary for any term not less than two years nor more than seven years.

Burning of
an out-house
not in town.

§ 4314. Setting fire to an out-house of another, as described in the preceding Section, shall be punished by imprisonment and labor in the penitentiary for any term not less than one year nor more than three years.

Setting fire
to such out-
house.

§ 4315. The crime of burning shall be complete where the house is consumed or generally injured.

What shall
be burning.

§ 4316. The offense of setting fire to a house shall be complete when any attempt is made to burn it, though no material injury is the consequence.

What shall
be setting
fire.

§ 4317. [The willful or malicious burning, or attempting to burn, any railroad bridge within this State, shall be deemed and adjudged arson, and shall be punished with death; but the punishment may be commuted in conformity with Section 4257 of this Code.] (a)

Burning
railroad
bridges.

§ 4318. Arson in the day time (except in a city, town, or village) shall be punished by a shorter period of imprisonment and labor than arson committed in the night.

Arson in
the day and
night time.

§ 4319. Arson which produces the death of any person, shall be punished by the death of the person or persons committing the arson; [but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (b)

Arson caus-
ing death.

§ 4320. [Burglary is the breaking and entering into the dwelling, mansion, or store-house, or other place of business of another, where valuable goods, wares, produce, or any other article of value are contained or stored, with intent to commit a felony or larceny. All out-houses contiguous to or within the curtilage or protection of the mansion or dwelling-house, shall be considered as parts of the same. A hired room or apartment in a public

Burglary.

May be in
day or night.

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tavern, inn, or boarding-house, shall be considered as the dwelling-house of the person or persons occupying or hiring the same. Burglary may be committed in the day or night.] (a)

In the day—
penitentiary
three to five
years.
§ 4321. Burglary in the day time shall be punished by imprisonment in the penitentiary for any time not less than three years nor longer than five years.

In the night
—death.
§ 4322. Burglary in the night shall be punished [with death; but the punishment may be commuted in conformity with the provisions of Section 4257 of this Code.] (b)

not less than five nor longer than twenty years
Acts of 1868
SIXTH DIVISION.

OF CRIMES AND OFFENSES RELATIVE TO PROPERTY.

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- 4349. Entering with intent.
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Definition
of robbery.
§ 4323. Robbery is the wrongful, fraudulent, and violent taking of money, goods, or chattels, from the person of another by force or intimidation, without the consent of the owner.

By force and
violence—
penitentiary
four to twenty
years.
§ 4324. Robbery by open force or violence shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than twenty years.

(a) Acts of 1866, pp. 151–2. (b) Acts of 1866, pp. 150–1–2

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§ 4325. Robbery by intimidation, or without using force and violence, shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

By intimidation—two to five years.

§ 4326. Larceny, or theft, as contradistinguished from robbery by violence, force, or intimidation, shall consist of—1st. Simple theft or larceny. 2d. Theft or larceny from the person. 3d. Theft or larceny from the house. 4th. Theft or larceny after a trust or confidence has been delegated or reposed.

The several kinds of larceny.

§ 4327. Simple theft, or larceny, is the wrongful and fraudulent taking and carrying away, by any person, of the personal goods of another, with intent to steal the same. The thief may be indicted in any County in which he may carry the goods stolen.

Simple larceny.

§ 4328. Horse stealing shall be denominated simple larceny, and the term "horse" shall include mule and ass, and each animal of both sexes, and without regard to the alterations which may be made by artificial means.

Of horses.

§ 4329. The offense shall, in all cases, be charged as simple larceny, but the indictment shall designate the nature, character, and sex of the animal, and give some other description by which its identity may be ascertained.

How charged and described.

§ 4330. The stealing of a horse or mule shall be punished [with death, unless recommended by the jury to the mercy of the Court, in which event the punishment shall be] (a) confinement and labor in the Penitentiary for any time not less than two years nor longer than five years.

Punishment.

§ 4331. Cattle stealing shall be denominated simple larceny, and be so charged in the indictment, and shall include the theft or larceny of any horned animal or animals, and all animals having the hoof cloven, except hogs.

Cattle stealing.

§ 4332. The indictment shall sufficiently describe the animal or animals falling under the description of cattle in the preceding Section, so that it or they may be ascertained and identified by the owner or owners thereof.

Indictment.

§ 4333. The stealing of one or more animals falling under the above description of cattle [shall be punished as prescribed in Section 4245 of this Code.] (b)

Punishment.

§ 4334. The stealing of a hog or hogs is simple larceny, and

(a) Acts of 1865-6, p. 232. (b) Acts of 1865-6, p. 233.

Amended Act 1866

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Hog steal- shall be so charged in the indictment, and the hog or hogs so de-
ing. scribed that it or they may be identified by the owner.

§ 4335. The punishment of hog stealing [shall be as prescribed
Punishment. in Section 4245 of this Code.] (a)

Other an- § 4336. All other domestic animals which are fit for food, and
imals. also a dog, may be subjects of simple larceny; and any person or
persons who shall steal any such animal or animals [shall be pun-
ished as prescribed in Section 4245 of this Code.] (a)

Altering brands or marks, same as stealing. § 4337. If any person or persons shall mark and brand, or
mark or brand, any animal or animals before mentioned, or alter
or change the mark or marks, or brand or brands, of any such
animal, being the property of another, with an intention to claim
or appropriate the same to his or her own use, or to prevent iden-
tification by the true owner or owners thereof, the person or per-
sons so offending shall be guilty of a misdemeanor, and, on con-
viction, shall suffer the same punishment as is inflicted for the
theft or larceny of said animal or animals.

Skinning cattle. § 4338. [It shall be unlawful for any person in this State to skin
any dead cow, or any other kind of stock, cattle, sheep, or goats,
that do not belong to him, her, or them, without consent of the
owner of such stock, cattle, sheep, or goats, his agent or overseer,
without accounting to the owner or owners thereof for the skin,
when thereunto demanded; and in all such cases, when any person
or persons shall have been engaged in skinning any cow, or other
kind of stock, cattle, sheep, or goats, and shall refuse, on demand
of the owner thereof, or his agent or overseer, to pay the reason-
able value of the skin, he, she, or they shall be subject to indict-
ment, and, upon conviction, shall be punished as prescribed in
Section 4245 of this Code.] (b)

Larceny of deeds or papers — penitentiary one to three years. § 4339. If any person shall take and carry away any paper,
document, deed, will, or other writing relating to real or personal
estate, with an intention to impair, prevent, or render difficult
the establishment of a title to real or personal estate, or mutilate,
cancel, burn, or otherwise destroy said paper, document, deed,
will, or other writing, with the intention aforesaid, such person
shall be guilty of simple larceny, and be punished by imprison-
ment and labor in the penitentiary for any time not less than
one year nor longer than three years.

(a) Acts of 1865-6, p. 233. (b) Acts of 1863-4, p. 64, and Acts of 1865-6, p. 233.

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§ 4340. If any person shall take and carry away any bond, note, bank bill, or due bill, or paper or papers, securing the payment of money or other valuable thing, or any receipt, acquittance, or paper or papers, operating as a discharge for the payment of money, or other thing belonging to another, with intent to steal the same, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.

Larceny of bonds, notes, etc. — penitentiary one to four years.

§ 4341. Theft or larceny may be committed of any thing or things which, in the language of the law, savors of the realty, or of any fixture or fixtures; and the punishment shall be [as prescribed in Section 4245 of this Code.] (a)

Fixtures.

§ 4342. Plundering or stealing any article of value from a vessel in distress, or from a wreck, or any other vessel, boat, or water-craft, within the jurisdictional limits of this State, is simple larceny, and shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year nor longer than five years.

Plundering or stealing from wrecked or distressed vessels.

§ 4343. All simple larcenies or thefts of the personal goods of another, not mentioned, or particularly designated in this Code, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Other larcenies.

§ 4344. Theft or larceny from the person as distinguished from robbery, before described, is the wrongful and fraudulent taking of money, goods, chattels, or effects, or any article of value from the person of another, privately, without his knowledge, in any place whatever, with intent to steal the same.

Larceny from the person defined.

§ 4345. A person convicted of this class of larceny shall be punished [as prescribed in Section 4245 of this Code.] (a)

Penitentiary two to five years.

§ 4346. Any sort of secret, sudden, or wrongful taking from the person with the intent described in Section 4344 of this Code, without using intimidation, or open force and violence, shall be within this class of larceny, though some small force be used by the thief to possess himself of the property; *provided*, there be no resistance by the owner, or injury to his person, and all the circumstances of the case show that the thing was taken, not so much against as without the consent of the owner.

What secret, sudden taking shall be larceny.

§ 4347. Larceny from the house is the breaking or entering any

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Larceny
from the
house.

house with the intent to steal, or after breaking or entering said house, stealing therefrom any money, goods, chattels, wares, merchandise, or any thing or things of value whatever.

Punishment.

§ 4348. Any person who, by day or night, shall in any dwelling-house, store, shop, or warehouse, or any other house or building, privately steal any goods, money, chattels, wares, or merchandise, or any other article or thing of value, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Punishment
for entering
with intent
to steal.

§ 4349. Any person entering a dwelling-house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from so doing, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Breaking
with such
intent.

§ 4350. Any person breaking any dwelling-house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from effecting such intention, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Breaking
and entering

§ 4351. Any person breaking and entering any house or building (other than a dwelling-house or its appurtenances), with intent to steal, but who is detected and prevented from carrying such intention into effect; or any person breaking or entering any such

Breaking,
entering and
stealing.

house or building, and stealing therefrom any money, goods, chattels, wares, or merchandise, or any other thing or article of value, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Public build-
ings includ-
ed.

§ 4352. Any house, building, or edifice, belonging to the State or a corporate body, or appropriated to public worship, or any other public purpose, shall be taken and considered as a house or building within which this class of larceny may be committed.

Hut, tent,
etc.

§ 4353. Any person entering and stealing from any hut, [rail-road car,] (b) tent, booth, or temporary building, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Fraudulent
seizure, etc.
of property
by pretended
U. S. agents.

§ 4354. [If any person, fraudulently claiming to act as agent or officer of the United States, or any department thereof, shall seize, detain, or remove the property of any citizen or resident of this State; or, if any person shall claim to be an officer or agent of the United States, or any department thereof, with authority to make said seizure, detention, or removal, and who shall not have such authority, such person, officer, or agent, so offending,

(a) Acts of 1865-6, p. 233. (b) Acts of 1862-3, p. 139; and Acts of 1865-6, p. 233.

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shall, upon conviction, be punished by confinement and labor in the penitentiary not less than one year nor longer than ten years, or shall be punished as prescribed in Section 4245 of this Code, at the discretion of the Court.] (c)

§ 4355. Any officer, servant, or other person, employed in any public department, station, or office of government, of this State, or any County, town, or city, of this State, or in any bank or other corporate body in this State; or any president, director, or stockholder, of any bank or other corporate body in this State, who shall embezzle, steal, secrete, fraudulently take and carry away any money, gold or silver bullion, note or notes, bank bill or bills, bill or bills of exchange, warrant or warrants, bond or bonds, deed or deeds, draft or drafts, check or checks, security or securities for the payment of money, or delivery of goods or other things, lease, will, letter of attorney, or other sealed instrument, or any certificate or other public security of the State for the payment of money, or any receipt, acquittance, release, or discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any day book, or other book of accounts, or any agreement or contract whatever, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than seven years.

Persons employed in public offices or banks stealing or embezzling papers or property.

§ 4356. If any factor, commission merchant, warehouse keeper, wharfinger, wagoner, stage driver, or other common carrier on land or water, or any other bailee, with whom any money, bank bill or bills, note or notes, bill or bills of exchange, draft or drafts, check or checks, bond or bonds, or other security or order for the payment of money or other valuable thing, or any cotton, corn, or other produce, goods, wares, or merchandise, or any other thing or things of value, are or may be entrusted or deposited by any person, shall fraudulently convert the same, or any part thereof, or the proceeds of any part thereof, to his or her own use, or otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor, and to his or her injury, and without paying to such owner or bailor, on demand, the full value or market price thereof; or if, after a sale of any of the said articles, with the consent of the owner or bailor, such person shall, fraud-

Any bailee fraudulently converting the goods or proceeds.

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ulently and without the consent of the said owner or bailor, convert the proceeds thereof, or any part of the said proceeds, to his or her own use, and fail or refuse to pay the same over to such owner or bailor, on demand, every such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than seven years.

Clerks,
agents, etc.
fraudulently
taking and
converting
goods en-
trusted to
them.

§ 4357. If any person, employed as a clerk, agent, or servant, or in any other character or capacity, in any store, warehouse, counting-room, exchange office, shop, or other place of trade, traffic, or exchange, where, from the nature of the business or employment, it is necessary or usual to entrust to such person any goods, wares, or merchandise, cotton, corn, or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders for payment of money, or other valuable thing, or any other thing or article of value, shall fraudulently take and carry away, or convert to his own use, or otherwise dispose of any of the said goods, wares, or merchandise, cotton, corn, or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders, or other thing or things of value, thus entrusted to him, or committed to his charge, to the injury and without the consent of the owner thereof, or person thus entrusting him, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than five years.

Any other
agent so of-
fending.

§ 4358. If any person who has been entrusted by another with any money, note or notes, bill, or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, order or orders for the payment of money, or other valuable article or thing, or any cotton, corn, or other produce, goods, wares, or merchandise, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other article or articles of value, for the purpose of applying the same for the use or benefit of the person to whom they belong, or the person delivering them, or any of them, or for the purpose of collecting money, or other thing due on any such note or notes, bill or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, or order or orders, and paying the proceeds thereof over to the owner or other person so entrusting or delivering the same, or for the purpose of selling such cotton, corn, or other produce, goods, wares, or merchandise,

Division 6.—Crimes and Offenses Relative to Property.

horse or horses, mule or mules, cattle, sheep, goats, hogs, or other valuable article, and paying over the proceeds of such sale to the owner, or other person so entrusting or delivering the said article or articles, or any of them, or the money, or other thing arising from the sale or collection of them, [shall fraudulently convert the same, or any part thereof, or the proceeds of any part thereof,] (a) to his or her own use, or shall otherwise dispose of them, or any of them, to the injury, and without the consent of the owner, or other person so entrusted or delivering them, and without paying to such owner, or person entrusting or delivering the same, the full value or market price thereof, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years.

§ 4359. Any president, director, or other officer of any chartered bank in this State, who shall violate, or be concerned in violating any provision of the charter of such bank, shall be guilty of a high misdemeanor, and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any term not less than one year, nor longer than ten years.

Bank officers
violating the
charter.

§ 4360. Every president, director, or other officer of any chartered bank in this State, shall be deemed to possess such a knowledge of the affairs of the corporation as to enable him to determine whether any act, proceeding or omission, is a violation of the charter. And every president and director who shall be present at a meeting when such violation shall happen, shall be deemed to have concurred therein, unless he shall at the time, cause, or in writing require, his dissent therefrom to be entered at large on the minutes of the board. And every president and director not present at any meeting when such violation shall take place, shall, nevertheless, be deemed to have concurred therein, if the facts constituting such violation appear on the books of the corporation, and he remain a director for three months thereafter, and do not within that time cause, or in writing require, his dissent from such illegal proceedings to be entered at large on the minutes of the board.

Presump-
tions against
such officers.

§ 4361. Every insolvency of a chartered bank, or refusal, or

(a) Acts of 1866, p. 233.

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Every bank
insolvency
shall be
deemed
fraudulent,
etc.

failure to redeem its bills on demand, either with specie or current bank bills passing at par value, shall be deemed fraudulent, and the president and directors may be severally indicted for a misdemeanor, and on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than ten years; *provided, nevertheless*, that the defendant may repel the presumption of fraud, by showing that the affairs of the bank have been fairly and legally administered, and generally with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe; and, upon such showing, the jury shall acquit the prisoner.

Certain
transfers, etc.
of stock
fraudulent,
etc.

§ 4362. All conveyances, assignments, transfers of stock, effects, or other contracts made by any bank in contemplation of insolvency, or after insolvency, except for the benefit of all the creditors and stockholders of said bank shall, unless made to an innocent purchaser for a valuable consideration, and without knowledge or notice of the condition of said bank, be fraudulent and void. And the president, directors, and other officers of said bank, or any of them, making, or consenting to the making of such conveyance, assignment, transfer, or contract, whether the same be made to an innocent purchaser or any other, shall severally be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

Bank officers
purchasing
its papers
at discount.

§ 4363. If any president, director, officer, or agent of any bank shall, by himself or agent, or in any other manner, either for himself or for the bank, directly or indirectly purchase, or be interested in the purchase of any bill, or check, or other evidence of debt issued by the said bank, for a less sum than shall appear then due on the face thereof, such person so offending shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

Declaring
fraudulent
dividends.

§ 4364. No dividends shall be made by any bank, except from the net profits arising from the business of the corporation; and if any president and directors shall declare or pay over any dividend from the capital stock, or any other funds of the bank, except the net profits thereof, such president and directors shall, severally, be guilty of a misdemeanor, and, on indictment and

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conviction thereof, shall be punished by confinement and labor in the penitentiary for any time not less than one year nor longer than ten years.

§ 4365. If the president and directors of any bank, or any of them, shall use and apply any part of the capital stock of such bank to the purchase of shares of its own stock, such president and directors shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than ten years. Purchasing shares with capital stock

§ 4366. If any person shall dig, or take and carry away from the land of another, any gold, bullion, silver, or other metallic substance, with intent to appropriate the same to his or her own use, without having previously obtained permission of the owner of such land so to do, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a) Unlawful mining.

§ 4367. If any person shall erect or use any machinery for the purpose of procuring gold or other metals from the land of another, with intent to appropriate the same to his or her own use, or for any other person whatsoever, without the permission of the owner of the land or his agent, he or she shall be guilty of a high misdemeanor, and, upon conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a) Erecting or using machinery to procure gold.

§ 4368. Any Clerk of the Inferior Court or County Treasurer of any County in this State, who shall divert, misapply, embezzle, or conceal any money belonging to the County of which he is such Clerk or County Treasurer as aforesaid, with intent to appropriate the same to his own use, shall be guilty of a misdemeanor, and, upon conviction, shall be punished with fine or imprisonment in the common jail, or both, at the discretion of the Court, and shall moreover be removed from office;* and on the trial of such defendant, proof of his having failed or refused to make an exhibit to the Grand Jury of the County of which he is such Clerk or County Treasurer, at the Superior Court first held in each year in said County (unless prevented by providential cause), a full and complete statement of the County funds, as required by law, received by him during the preceding year, shall be deemed *prima* Embezzling of County funds.

(a) Acts of 1865-6, p. 233. *See Section 4608.

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facie evidence of guilt, and throw the burden of proof upon the defendant. The prosecuting officer, on the trial of any indictment founded on this clause, shall not be required to identify the money, coin, or bank bills, or other property misapplied, embezzled, or concealed; but in all cases, an allegation that any sum of money or evidence of debt has been received by the defendant, belonging to the County, and that he fails or refuses to account for the same, if proved, shall authorize a conviction, unless the defendant shall set up and sustain a valid and legal defense to the charge.

§ 4369. Any person who shall fraudulently cause any process, attachment, distress, or execution, to be levied on any estrayed animal, or any lot or lots of land, or other property, knowing the same not to be subject to such process or writ, shall be guilty of a misdemeanor, and, on conviction for the first offense, shall be [punished as prescribed in Section 4245 of this Code;] (a) and on any subsequent conviction, shall be sentenced to labor in the penitentiary not less than two nor longer than four years.

§ 4370. Any person intruding unlawfully upon the constructed track of any chartered railroad company of this State, or the State railroad, contrary to the will of the company or Superintendent, shall be guilty of a misdemeanor, and upon conviction [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4371. If any person shall willfully and maliciously destroy, or in any manner hurt, damage, injure, or obstruct, or shall willfully and maliciously cause, or aid and assist, or counsel or advise any other person or persons to destroy, or in any manner to hurt, damage, or injure, or obstruct any such railroad, or any branch thereof, or any bridge connected therewith, or any vehicle, edifice, right or privilege granted by charter, and constructed for use under authority thereof; or if an unauthorized person or persons shall turn, move, or in any manner interfere or meddle with any gate, switch, sideling, or other appurtenances to any such railroad, such person so offending shall be guilty of felony; and on conviction, shall be imprisoned in the penitentiary not less than four nor longer than eight years. If death ensues from such act, to any person, the offender shall be guilty of murder, and punished accordingly. This penalty shall in no case interfere with the offender's liability to civil damages.

(a) Acts of 1865-6, p. 233.

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§ 4372. If any person shall willfully destroy, damage, or in any way injure the posts, wires, or fixtures of any magnetic telegraph company in this State, he shall be guilty of a misdemeanor, and on conviction, shall be punished as prescribed in Section 4245 of this Code.] (a)

Interference with magnetic telegraph companies.

§ 4373. [The following shall be deemed and held to be trespass, and indictable—to wit :

What acts deemed trespass.

1. The willful cutting or felling of any wood, timber, or shade-tree, upon the land, enclosed or unenclosed, of another, without the consent of the owner.

Willful cutting, etc. of wood, etc.

2. The taking and carrying away, or attempting to take and carry away, any timber, wood, rails, fruit, vegetables, corn, cotton, or any other article, thing, produce, or property of any value whatever, from the land, enclosed or unenclosed, of another, without the consent of the owner.

Taking etc. of timber, etc.

3. The pulling down or removing any fence, paling, or enclosure of another, without the consent of the owner.

Removing fence, etc.

4. The squatting or settling upon the land, enclosed or unenclosed, of another, whether public or private, with no *bona fide* claim or color of title, and without the consent of the owner; *provided* the intruder shall not remove off the land after ten days' notice; *and provided further*, that this paragraph shall not apply to wayfarers who shall camp for a night, or in case of providential detention, for a longer time, on unenclosed land.

Squatting or settling.

After ten days' notice.

Wayfarers not liable—when.

Any person committing any of the acts of trespass specified in this Section, shall be held and deemed guilty of a misdemeanor, and subject to indictment in any Court having jurisdiction thereof, and upon conviction shall be punished [as prescribed in Section 4245 of this Code.] (b)

Indictment.

Punishment.

§ 4374. [It shall not be lawful for any person to hunt with dogs, fire-arms, or other implements, in or through any enclosed lands, fields, walks, or pastures, wherein, or whereon sheep are kept or confined, without the consent of the owner thereof; and for every violation of the provisions of this Section, the person so offending shall be deemed and held guilty of trespass and misdemeanor, and subject to indictment in any Court having jurisdiction thereof, and upon conviction, shall be fined or imprisoned, or both, at the discretion of the Court; the fine not to exceed fifty dollars—the imprisonment not to exceed thirty days for each offense.] (c)

Illegal hunting.

Division 7.—Forgery and Counterfeiting, and Unlawful Currency.

SEVENTH DIVISION.

FORGERY AND COUNTERFEITING, AND UNLAWFUL CURRENCY.

SECTION.

- 4375. Official certificates, etc.
- 4376. Counterfeiting coin.
- 4377. Bank notes.
- 4378. Bank check or draft.
- 4379. Altering bank note.
- 4380. Knowingly uttering.
- 4381. Possessing to pass.
- 4382. Possessing implements.
- 4383. Forging notes, bills, etc.

SECTION.

- 4384. Any other writing.
- 4385. Forged public seal.
- 4386. Using fictitious name.
- 4387. Personating another.
- 4388. Buying under false letters, etc.
- 4389. Issuing, etc., unlawful currency.
- 4390. Each bill—new offense.
- 4391. Duty of Grand Jury.
- 4392. Disposition of fine.

Forging any
official cer-
tificates, etc.

§ 4375. If any person or persons shall falsely and fraudu-
lently make, forge, alter, or counterfeit, or cause or procure
to be falsely and fraudulently made, forced, altered, or counter-
feited, or willingly aid or assist in falsely and fraudulently making,
forging, altering, or counterfeiting any audited certificate or other
certificate issued or purporting to have been issued by the Auditor
General, or other officer authorized to issue the same, or any order
or warrant issued or purporting to have been issued by the Gover-
nor, or the President of the Senate, or Speaker of the House of
Representatives of the General Assembly of this State, or by any
officer of the Government, or authorized person, on the Treasury
of said State, for any money or other thing, or any warrant for
land issued or purporting to have been issued by the Justices of
any Land Court, or by any other tribunal, officer or person,
authorized to do so, within this State; or any certificate, draft,
warrant, or order, from any of the public officers of this State,
issued or purporting to have been issued under or by virtue of an
act or resolution of the General Assembly of this State; or any
certificate, draft, order, or warrant, issued or purporting to have
been issued by any Court, officer, or person authorized to draw on
the Treasury of this State, or for public money, wherever the
same may be deposited, or any deed, will, testament, bond, wri-
ting obligatory, bill of exchange, promissory note, or order for
money, or goods, or other things of value, or any acquittance or
receipt, or any indorsement or assignment of any bond, writing
obligatory, bill of exchange, promissory note, or order for money
or goods, or other thing or things of value, with intent to de-
fraud the said State, public officer or officers, Courts, or any
persons authorized, or any person or persons whatever, or shall
utter or publish as true any false, fraudulent, forged, altered or

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counterfeited audited certificate, Governor's, President's, Speaker's, public officer's, Court's, or other duly authorized person's certificate, draft, warrant, or order, so as aforesaid issued, or purporting to have been issued, or any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or order for money, or goods, or other thing or things of value; or any acquittance or receipt for money or goods, or other thing or things of value; or any indorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note, or order for money or goods, or other thing or things of value, with intent to defraud the said State, public officers, Courts, or persons authorized as aforesaid, or any other person or persons whatsoever, knowing the same to be so falsely and fraudulently made, forged, altered, or counterfeited; every such person so offending, and being thereof lawfully convicted, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

§ 4376. If any person shall falsely and fraudulently make, forge, or counterfeit, or be concerned in the false and fraudulent making, forging and counterfeiting of any gold, silver, or copper coin, which now is or shall be passing, or in circulation within this State; or shall falsely and fraudulently make, or be concerned in the false and fraudulent making of any base coin of the likeness or similitude of any gold, silver, or copper coin, which now is, or shall be passing, or in circulation within this State; or shall falsely and fraudulently utter, publish, pay, or tender in payment any such counterfeit and forged coin of gold, silver, or copper, or any base coin, knowing the same to be forged, or counterfeited, or base, or shall aid or abet, counsel or command the perpetration of either of the said crimes, such person shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

Counterfeiting or knowingly uttering counterfeit coins—penitentiary four to ten years.

§ 4377. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing or printing of any counterfeit note or bill of any bank of this State, or the note or bill of any incorporated bank, whose notes or bills are in circulation in this State, or falsely and fraudulently cause, or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

Counterfeiting bank notes—penitentiary four to ten years.

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§ 4378. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing, or printing of any check or draft upon any bank of this State, or bank as aforesaid; or falsely or fraudulently procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than three years, nor longer than seven years.

§ 4379. If any person shall falsely and fraudulently alter, or be concerned in the false and fraudulent alteration of any genuine note, bill, check, or draft of, or on any bank as aforesaid; or falsely and fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than three years, nor longer than ten years.

§ 4380. If any person shall falsely and fraudulently pass, pay, or tender in payment, utter or publish any false, forged, counterfeit or altered note, bill, check, or draft, as aforesaid, knowing the same to have been falsely and fraudulently forged, counterfeited, or altered; such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than ten years.

§ 4381. If any person shall have in his or her possession any such false, forged, counterfeit, or altered note or notes, bill or bills, draft or drafts, check or checks, with intention fraudulently to pass the same, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than ten years.

§ 4382. If any person shall have in his or her possession any bank paper, types, plates or machinery, for the purpose of falsely or fraudulently forging and counterfeiting any notes, bills, checks or drafts as aforesaid, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

§ 4383. If any person shall falsely and fraudulently make, forge, counterfeit, or alter any note, bill, draft, or check of or on any person, body corporate, company, or mercantile house or firm, or purporting so to be; or fraudulently and falsely utter, publish, pass, pay, or tender the same in payment, or demand payment of the same, knowing the said bill, note, draft, or check to be forged and counterfeited, or falsely and fraudulently altered, such person

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so offending shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two nor longer than ten years.

§ 4384. If any person shall fraudulently make, sign, forge, counterfeit, or alter, or be concerned in the fraudulent making, signing, forging, counterfeiting, or altering any other writing not herein provided for, with intent to defraud any person or persons, bank or other corporate body, or shall fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years nor longer than five years.

Forging any
other writ-
ing.

With intent
to defraud.

§ 4385. If any person shall falsely and fraudulently forge or counterfeit, or be concerned in forging and counterfeiting the great seal of this State, or any seal used for Government purposes, the public and common seal of any Court, office, County, or corporation, or any other seal authorized by law, or shall falsely and fraudulently cause or procure the same to be forged and counterfeited, or shall falsely, fraudulently, and knowingly impress, or cause to be impressed, any instrument whatever, whether the same be written or printed, or partly written and partly printed, with such forged and counterfeit seal, or shall falsely, fraudulently, and knowingly annex or affix, or cause to be annexed or affixed to any such instrument, such forged and counterfeit seal, or shall falsely and fraudulently utter or publish any instrument or writing whatever, impressed with such forged and counterfeit seal, knowing the same to be forged and counterfeit, such person so offending shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years nor longer than ten years.

Forging or
using forged
public seals.

§ 4386. Any person who shall draw or make a bill of exchange, due bill, or promissory note, or indorse or accept the same in a fictitious name, shall be guilty of forgery, and, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years nor longer than seven years.

Using ficti-
tious names.

§ 4387. If any person shall put his own name to any instrument, representing himself to be a different person of that name, such person shall be guilty of forgery, and, on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years nor longer than seven years.

Personating
another.

§ 4388. If any person shall designedly, by color of any counterfeit letter or writing, made in any other person's name, or

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Obtaining
goods, etc.
on false writ-
ings.

fictitious name, obtain from any person money, goods, chattels, or other valuable thing, with intent to defraud any person, mercantile house, or body corporate, or company of the same, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two nor longer than seven years.

Unauthor-
ized issue of
currency.

§ 4389. Any person or persons, body corporate or politic, who may hereafter make, issue, circulate, pay, or tender in payment (not being an innocent holder thereof), any check, order, draft, or bill for the payment of money, or other thing having the form or similitude of a bank note, and intended to be used and circulated as money, or circulating medium, except such banking institutions and corporations as by law are authorized to issue notes, or bills for circulation, shall be liable to indictment, as for a misdemeanor, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Each bill a
new offense.

§ 4390. The making or issuing each check, order, draft, or bill for the payment of money, or other thing having the similitude of money, as above, shall be considered and held as a separate and distinct offense; and if done by any corporation or body politic, the officer or member of the same signing the said check, order, bill, or other thing having the similitude of money, or intended to be used as money, shall be liable to prosecution and conviction.

Duty of
Judge and
jury.

§ 4391. It shall be the duty of every Grand Jury to notice and present all violations of the foregoing provisions as to unauthorized currency, and of the presiding Judges of the Superior Courts, whenever necessary, to give the same in special charge.

Disposition
of fine.

§ 4392. In all cases of conviction for violation of Sections 4389 and 4390, one-half of the fine shall be paid to the prosecutor, if there be one, and the other half to the Educational Fund of the County.

(a) Acts of 1865-6, p. 233.

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EIGHTH DIVISION.

CRIMES AND OFFENSES AGAINST THE PUBLIC JUSTICE.

SECTION.

- 4393. Perjury. ✓
- 4394. Punishment.
- 4395. False swearing.
- 4396. Punishment.
- 4397. Subornation.
- 4398. Punishment.
- 4399. Disqualification.
- 4400. Verdicts void.
- 4401. Causing death.
- 4402. Bribery.
- 4403. Punishment.
- 4404. Altering public documents.
- 4405. Cruelty in jailor.
- 4406. Detaining records.
- 4407. Personating in bail.
- 4408. Obstructing process.
- 4409. Assaults *colore officie*.
- 4410. Rescue.
- 4411. Punishment in criminal cases.
- 4412. In civil cases.
- 4413. Attempt to rescue.
- 4414. Aiding to escape.
- 4415. From custody.
- 4416. From penitentiary.

SECTION.

- 4417. Voluntary escape.
- 4418. Refusing to receive prisoner.
- 4419. Refusing penitentiary prisoners.
- 4420. Receiving stolen goods.
- 4421. Principal escaping.
- 4422. Accessories after the fact.
- 4423. Compounding felonies.
- 4424. Compounding penalties.
- 4425. Conspiracies.
- 4426. Interfering with apprentices.
- 4427. Who may testify.
- 4428. Illegal employment of servants.
- 4429. Barratry.
- 4430. Punishment.
- 4431. Embracery.
- 4432. Malpractice by Justice of the Peace.
- 4433. Threatening letters.
- 4434. Extortion.
- 4435. Punishment.
- 4436. Other offenses.
- 4437. Mutiny.
- 4438. Instigating mutiny.
- 4439. Receiving stolen goods from negroes

§ 4393. Perjury shall consist in willfully, knowingly, absolutely, and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, or affirming in a matter material to the issue or point in question, in some judicial proceeding, by a person to whom a lawful oath or affirmation is administered.

Perjury defined.

§ 4394. Any person who shall commit the crime of perjury shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

Punishment.

§ 4395. False swearing shall consist in willfully, knowingly, absolutely, and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, or affirming in any matter or thing (other than a judicial proceeding), by a person to whom a lawful oath or affirmation is administered.

False swearing defined.

§ 4396. Any person who shall commit the crime of false swearing shall be punished by imprisonment and labor in the penitentiary for any time not less than three years nor longer than ten years.

Penitentiary three to ten years.

§ 4397. Subornation of perjury and false swearing shall consist in procuring another person to commit the crime of perjury or false swearing.

Subornation.

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§ 4398. Any person who shall commit the crime of subornation of perjury, or false swearing, shall be punished by confinement and labor in the penitentiary for any time not less than three years nor longer than ten years.

§ 4399. Any person who shall be lawfully convicted of either of the crimes mentioned and defined in Sections 4393, 4395, and 4397 of this Code, shall, in addition to the punishment prescribed in Sections 4394, 4396, and 4398 of this Code, be forever thereafter disqualified from being a witness in any controversy.

§ 4400. Any verdict or judgment, rule or order, of Court, which may have been obtained or entered up, shall be set aside and be of no effect, if it shall appear that the same was obtained or entered up in consequence of willful and corrupt perjury; and it shall be the duty of the Court in which such verdict, judgment, rule, or order, may have been obtained and entered up, to cause the same to be set aside, upon motion and notice to the adverse party; but it shall not be lawful for the said Court to do so unless the person charged with said perjury shall have been thereof duly convicted, and unless it shall appear to the said Court that the said verdict, judgment, rule, or order, could not have been obtained or entered up without the evidence of such perjured person—saving always to third persons, innocent of such perjury, the right which they may have lawfully acquired under such verdict, judgment, rule, or order, before the same shall have been actually vacated and set aside.

§ 4401. If any person, by willful and corrupt perjury, shall take away the life of another, or, by such willful and corrupt perjury, convict another of any offense which, by this Code, is punishable with death or perpetual imprisonment, such person shall be punished with death or perpetual imprisonment.

§ 4402. Bribery is the giving or receiving any undue reward to influence the behavior of the person receiving such reward in the discharge of his duty, in any office of government or of justice.

§ 4403. If any person shall directly, or indirectly give, or offer to give any money, goods, or other bribe, present, or reward; or give or make any promise, contract, or agreement for the payment, delivery, or alienation of any money, goods, lands, or other bribe; or use any promises, threats, persuasions, or other like-sinister, unfair, or fraudulent practices in order to obtain or influence the

Penitentiary three to ten years.

Disqualified as witness.

Verdicts, etc. obtained by perjury set aside.

Proviso.

False witness causing death, etc., to suffer death.

Bribery defined.

Punishment of bribery.

perjury
and corrupt
perjury
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opinion, judgment, decree, or behavior, of any member of the General Assembly, or any officer of this State, Judge, Justice, referee, or arbitrator in any discussion, debate, action, suit, complaint, indictment, controversy, matter, or cause depending, or which shall depend before him or them, such person shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a) And the member of the General Assembly, or officer, Judge, Justice, referee, or arbitrator who shall accept or receive such bribe, shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a) Of the person bribed.

§ 4404. If any Judge, Justice, Mayor, Alderman, Clerk, Sheriff, Coroner, or other public officer, or any other person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, or contract; or shall knowingly and willingly take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment, or certificate; or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public office within this State; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than ten years. Stealing, altering, etc. of public documents.

§ 4405. If any jailor, by too great a duress of imprisonment, or other cruel treatment, make or induce a prisoner to become an approver, or accuse and give evidence against some other person; or be guilty of willful inhumanity or oppression to any prisoner under his care and custody, such jailor shall be punished by removal from office, and imprisonment and labor in the penitentiary for any time not less than one year, nor longer than three years. Cruelty in jailors.

§ 4406. If any officer, after the expiration of the time for which he may have been elected, or appointed, shall willfully and unlawfully withhold, or detain from his successor the records, papers, documents, books, or other writings appertaining and belonging to his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by his said successor of said records, Officers detaining books, etc. from successors.

(a) Acts of 1865-6, p. 233.

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documents, papers, books, or other writings, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Personating
in bail, judg-
ment, etc.

§ 4407. If any person except the Attorney of Record shall acknowledge or procure to be acknowledged, in any of the Courts of this State, or before any authorized officer, any recognizance, bail, or judgment in the name of any other person not privy or consenting thereto, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any period of time not less than one year, nor longer than four years.

Obstructing
legal process

§ 4408. If any person shall knowingly and willfully obstruct, resist, or oppose any Sheriff, Coroner, or other officer of this State, or other person duly authorized in serving, or attempting to serve or execute any lawful process, or order of any Court, Judge, Justice, or arbitrators, or any other legal process whatever; or shall assault or beat any Sheriff, Coroner, Constable, or other officer, or person duly authorized, in serving or executing any process or order aforesaid, or for having served or executed the same; every person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Assault, etc.
under color
of office.

§ 4409. If any officer of this State, whatever, shall assault or beat any individual under color of his office, or commission, without a lawful necessity so to do, such officer so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Rescue de-
fined.

§ 4410. Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment.

Punishment
in criminal
cases.

§ 4411. If any person shall rescue another in legal custody on criminal process, such person so offending shall, on conviction, receive the same punishment as the person rescued would, on conviction, be sentenced to receive; but if the person rescued shall have been acquitted of the crime charged against him, then and in such case, the person rescuing shall be punished [as prescribed in Section 4245 of this Code.] (a)

Punishment
in civil c.ses.

§ 4412. If any person shall rescue another in legal custody on civil process, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

§ 4413. If any person shall attempt to rescue another in legal

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custody on criminal process, such person so offending shall, on conviction, be punished by confinement in the common jail of the County for any time not exceeding six months, or by confinement and labor in the penitentiary for any time not less than one year nor longer than two years, at the discretion of the Court.

Attempt to
rescue.

§ 4414. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offense against this State, or under any civil process, to make his or her escape from jail, whether such escape be actually effected or not, or if any person shall convey, or cause to be delivered to such prisoner any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year nor longer than four years.

Assisting to
escape from
jail.

§ 4415. If any person shall aid or assist any prisoner to escape, or attempt to escape from the custody of any Sheriff, Coroner, Constable, officer, or other person, who shall have the lawful charge of such prisoner, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year nor longer than five years.

Assisting to
escape from
custody.

§ 4416. If any person confined in the penitentiary shall escape therefrom, and be thereafter retaken, such person shall be indicted for an escape, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for the term of four years; and any person who shall aid or assist a prisoner confined in the penitentiary to escape, or in an attempt to escape therefrom, shall, on conviction, receive the like punishment.

Escape from
penitentiary

Aiding
therein.

§ 4417. If any Sheriff, Coroner, Constable, keeper of a jail, keeper, officer, or other person employed in the penitentiary, having any offender, guilty, or accused of, or confined for any crime, in his custody, shall voluntarily permit or suffer such offender to escape and go at large, every such Sheriff, Coroner, keeper of a jail, keeper, officer, or other person employed in the penitentiary, Constable, or other officer, or person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than seven years, and shall moreover, if a public officer, be dismissed from office.

Voluntary
escapes.

§ 4418. If any Sheriff, Coroner, Constable, keeper of a jail, or other officer, whose duty it is to receive persons charged with or guilty of an indictable offense, shall refuse to receive and take charge of such person or persons, every such Sheriff, Coroner,

Refusing to
receive pris-
oner.

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Constable, keeper of a jail, or other officer, so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than seven years; and such officer shall moreover be dismissed from office.

§ 4419. If the keeper of a penitentiary, or other officer or person employed there, whose duty it is to receive convicts, shall fail or refuse to do so, such keeper, officer, or other person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not exceeding ten years; and shall moreover be dismissed from office.

§ 4420. If any person shall buy or receive any goods, chattels, money, or other effects, that shall have been stolen or feloniously taken from another, knowing the same to be stolen or feloniously taken, such person shall be taken and deemed to be an accessory after the fact, and shall receive and suffer the same punishment as would be inflicted on the person convicted of having stolen or feloniously taken the said goods, chattels, money, or effects, so bought or received.

§ 4421. If the principal thief or thieves can not be taken, so as to be prosecuted and convicted, it shall be lawful to prosecute any person buying or receiving any goods, chattels, money, or effects, stolen or feloniously taken by such principal thief or thieves, knowing the same to be stolen or feloniously taken, as for a misdemeanor, and, on conviction, such person shall be punished as prescribed in the preceding Section; and a conviction under this Section shall be a bar to any prosecution under Section 4420.

§ 4422. If any person shall receive, harbor, or conceal, any person guilty of a crime punishable by death, or imprisonment and labor in the penitentiary, knowing such person to be guilty, such person so receiving, harboring, or concealing, shall be taken and deemed to be an accessory after the fact, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

§ 4423. If any person shall take or receive any money, goods, chattels, lands, or other reward, or promise to compound, or shall, for any cause, compound any crime or offense punishable with death or imprisonment and labor in the penitentiary, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than five years.

§ 4424. If any person, informing or prosecuting under pretence

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of any penal law, shall compound with the offender, or direct the suit or information to be discontinued, unless it be by leave of the Court where the same is pending, such person so offending shall, on conviction, [be punished as prescribed in Section 4245 of this Code.] (a) Compound-
ing penalties

§ 4425. If any two or more persons shall conspire or agree, falsely and maliciously, to charge and indict any innocent person of a crime, who is accordingly indicted and acquitted, such person so conspiring, and each and every one of them, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than twelve months nor longer than five years. Conspiracy.

§ 4426. [If any two or more persons shall associate themselves together in any society or organization whatever, with intent and for the purpose of preventing, in any manner whatever, any person or persons whomsoever from apprenticing himself or themselves to learn and practice any trade, craft, vocation, or calling whatsoever, or for the purpose of inducing, by persuasion, threats, fraud, or any other means, any apprentice or apprentices to any such trade, craft, vocation, or calling, to leave the employment of their employer or employers, or for the purpose, by any means whatever, of preventing or deterring any person or persons whomsoever, from learning and practicing any such trade, craft, vocation, or calling whatsoever, every such person so associating himself in such society or organization shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as prescribed in Section 4245 of this Code.] (b) Enticing
away ap-
prentices.

Punishment

§ 4427. [Upon the trial of any person or persons under the preceding Section, any person may be made a witness; and no statements made by him or her, on such trial, shall be given in evidence against him or her, except upon an indictment for perjury.] (b) Evidence
on trial.

§ 4428. [If any person, by himself or agent, shall be guilty of employing the servant of another, during the term for which he, she, or they, may be employed, knowing that such servant was so employed, and that his term of service was not expired—or, if any person or persons shall entice, persuade, or decoy, or attempt to entice, persuade, or decoy, any servant to leave his employer, either by offering higher wages, or in any other way whatever, during the term of service, knowing that said servant was so employed, shall be deemed guilty of a misdemeanor, and, upon con- Illegal em-
ployment of
servants.

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viction thereof, shall be fined any sum not more than two hundred dollars, or be confined in the common jail of the County, in the discretion of the Court, not to exceed three months.] (a)

Barratry
defined.

§ 4429. Common barratry is the offense of frequently exciting and stirring suits and quarrels between individuals, either at law or otherwise.

Punishment.

§ 4430. Any person who shall be found and adjudged a common barrator, vexing others with unjust and vexatious suits, shall, on conviction, be punished by a fine not exceeding five hundred dollars; and if the offender belongs to the profession of the law, he shall also be disqualified from practicing for the future.*

Embracery.

§ 4431. Embracery is an attempt, whether successful or not, to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure, or attempt to procure, a juror to take money, gain, or profit, or shall corruptly influence, or attempt to influence, a juror by persuasions, promises, entreaties, or by any other means, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years. And the juror convicted of taking money, gain, or profit, or of being corruptly influenced as aforesaid, shall be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years, and shall moreover be forever disqualified to act as a juror.

Mal practice
by Justices
of the Peace
and others.

§ 4432. [Any Justice of the Inferior Court, or Justice of the Peace, who shall be charged with malpractice in office, or with using oppression or tyrannical partiality, or with willfully refusing or failing to preside in or hold his Court at the regular terms thereof, or when it is his duty under the law to do so, or with using any other means to delay or avoid the due course or proceeding of law, or with any other conduct unbecoming the character of an] (b) upright Magistrate or who shall willfully and knowingly demand more cost than he is entitled to by law, in the administration and under color of his office, may be indicted; which indictment shall specially set forth the merits of the complaint, and a copy thereof be served on the defendant before the same is laid before the Grand Jury; and the prosecutor and the Justice, and their witnesses, shall have the right of appearing and being heard before the Grand Jury; which indictment, if

(a) Acts of 1866, pp. 153-4. * See Section 4608. (b) Acts of 1865-6, pp. 233-4.

Division 8.—Crimes and Offenses Against the Public Justice.

found true by the Grand Jury, shall, as in other cases, be tried by a Petit Jury—and if the defendant be convicted, he shall be punished by fine or imprisonment in the common jail of the County, or both, at the discretion of the Court—and shall moreover be removed from office, if still in office.*

§ 4433. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another person of a crime, with intent to extort money, goods, chattels, or other valuable thing; or threatening to maim, wound, kill, or murder such person, or any of his family, or to burn or otherwise destroy or injure his or her house, or other property, real or personal, though no money, goods, chattels, or other valuable thing, be demanded, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

Threatening letters.

299a 470

§ 4434. Extortion shall consist in any public officer's unlawfully taking, by color of his office, from any person, any money or thing of value that is not due to him, or more than his due.

Extortion defined.

§ 4435. Any public officer who shall, by himself, his deputy, agent, or other person employed by him, be guilty of extortion in demanding and receiving other and greater fees than by law are allowed him; or shall, by color of his office, take from any person any money or other thing of value that is not due to him, or more than his due, such officer shall be subject to indictment, and on conviction, shall be punished [as prescribed in Section 4245 of this Code,] (a) and shall moreover be dismissed from office.

Fine and dismissal.

§ 4436. Any other offense against public justice not herein provided for, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Other offenses vs. public justice.

§ 4437. If any prisoner in the penitentiary shall assail, oppose, or resist any officer of the penitentiary, or any member of the guard, with any weapon, or implement calculated to cause death or serious bodily injury, such prisoner so offending, shall be deemed guilty of mutiny, and on conviction thereof, shall be punished by an additional term of imprisonment and labor in the penitentiary, not less than two years nor longer than five years, at the discretion of the Court, to be computed from the expiration of the term of imprisonment and labor to which such prisoner shall have been previously sentenced.

Mutiny in penitentiary

* See Section 4608. (a) Acts of 1865-6, p. 233.

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§ 4438. If any person shall persuade, entice, or instigate any ^{Instigating} prisoner to mutiny, such person so offending shall be guilty of a ^{mutiny.} misdemeanor, and on conviction, shall be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years, at the discretion of the Court, to be computed, if a prisoner in the penitentiary, from the expiration of the term of imprisonment and labor for which he shall have been previously sentenced.

§ 4439. If any free white person shall buy or receive any money, ^{Receiving} goods, chattels, or other effects, from any negro or free person of ^{stolen goods} color, that has or have been stolen, or feloniously taken, knowing ^{from a negro.} the same to have been so stolen or feloniously taken, such person so offending shall be deemed and taken to be an accessory after the fact, and being convicted thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than four years.

NINTH DIVISION.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

SECTION.

- 4440. Unlawful assemblies.
- 4441. Riot.
- 4442. Affrays.
- 4443. Dueling, challenging.
- 4444. Seconds.
- 4445. Dueling, fighting.
- 4446. Officers not preventing.
- 4447. Charging the "coward."

SECTION.

- 4448. Libel.
- 4449. Printer, witness.
- 4450. Truth proved.
- 4451. Forceible entry.
- 4452. Forceible detainer.
- 4453. Punishment.
- 4454. Carrying deadly weapons.
- 4455. Other offenses.

§ 4440. If two or more persons assemble for the purpose of dis- ^{Unlawful}turbing the public peace, or committing any unlawful act, and ^{assemblies.} do not disperse upon being commanded to do so by a Judge, Justice, Sheriff, Constable, Coroner, or other peace officer, such person so offending shall be guilty of a misdemeanor, and on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

§ 4441. If any two or more persons, either with or without a ^{Riot.} common cause of quarrel, do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a riot, and on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

(a) Acts of 1865-6, p. 233.

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§ 4442. An affray is the fighting of two or more persons in some public place, to the terror of the citizens and disturbance of the public tranquillity. Persons so offending shall be indicted, and on conviction, shall be punished [as prescribed in Section 4245 of this Code;] (a) and it shall be considered a great aggravation of this offense if any contempt or disobedience of the Magistrate, or other peace officer commanding the peace, shall be proved.

Affrays.

§ 4443. If any person shall deliberately challenge, by word or writing, the person of another, to fight with sword, pistol, or other deadly weapon, or if any person so challenged shall accept the said challenge, in either case, such person so giving, or sending, or accepting any such challenge, shall, on conviction, be punished by a fine not less than five hundred dollars, and be imprisoned in the common jail of the County for any time not exceeding six months. Or, if the jury should so recommend, such person shall, in addition to the fine herein imposed, be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than two years.*

Duelling.

§ 4444. If any person shall knowingly and willfully carry and deliver any written or printed challenge, or verbally deliver any message or challenge to another, to fight with sword, pistol, or other deadly weapon, or shall consent to be a second in any such duel or combat, such person so offending shall, on conviction, be punished in the same manner as prescribed in the preceding Section.

Seconds same punishment.

§ 4445. If any person shall be engaged in the act of fighting a duel, with sword, pistol, or other deadly weapon, either as principal or second, such person shall be guilty of a high misdemeanor, and on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than eight years; *provided, nevertheless*, that if death should ensue from such duel, then all the parties, both principals and seconds, shall be guilty of murder, and suffer the punishment of death, [but the punishment may commuted in conformity with the provisions of Section 4257 of this Code.] (a)

Act of fighting a misdemeanor.

If death ensues.

§ 4446. If any Justice, or other public officer bound to preserve the public peace, shall have knowledge of an intention in any person or persons to fight with any deadly weapon, and shall not use and exert his official authority to arrest the parties and prevent the duel, by binding over the parties concerned to keep the

Officers knowing and not preventing duels.

(a) Acts of 1865-6, p. 233. * See Section 4608. (b) Acts of 1866, p. 150.

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peace toward each other, such Judge, Justice, or other peace officer so offending, shall, on conviction, be dismissed from office.

§ 4447. If any person or persons shall, in any newspaper, or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious and abusive language for not accepting a challenge or fighting a duel, such person or persons so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Proclaiming
as "coward,"
etc., in print.

Libel de-
fined.

§ 4448. A libel is a malicious defamation, expressed either by printing, or writing, or signs, pictures or the like, tending to blacken the memory of one who is dead, or the honesty, virtue, integrity, or reputation of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person convicted of this offense, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Printer, a
witness.

Refusing
to testify.

§ 4449. In all prosecutions under the two preceding Sections of this Division, the printer or publisher of a newspaper, handbill, or other publication containing the offensive or criminal matter, shall be a competent witness; and if such printer or publisher shall refuse to testify in the cause, or to give up the real name of the author or person authorizing and causing the publication, so that he may be indicted, then such printer or publisher shall be deemed and considered the author himself, and be indicted and punished as such; and may, moreover, be punished for a contempt of the Court, as any other witness refusing to testify.

The truth
in evidence.

§ 4450. In all cases of indictment for a libel, or for slander, the person prosecuted shall be allowed to give the truth in evidence.

Forcible
entry.

§ 4451. Forcible entry is the violently taking possession of lands and tenements with menaces, force, and arms, and without authority of law.

Forcible
detainer.

§ 4452. Forcible detainer is the violently keeping possession of lands and tenements with menaces, force and arms, and without authority of law.

Punishment
for forcible
entry or de-
tainer.

§ 4453. Any person who shall be guilty of a forcible entry, or a forcible detainer, or both, may be indicted, and, on conviction, shall be punished by fine or imprisonment in the common jail of the County, or both, at the discretion of the Court; and the Court before whom the conviction takes place, shall cause restitution of possession of the premises to be made to

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the party aggrieved;* *provided, always*, that if the party forcibly detaining lands and tenements, or those under whom he claims, shall have been in peaceable possession of the same for the space of three years or more, immediately preceding the filing of the complaint, such person or party shall not be subject to the penalties of this Section, nor shall restitution of possession be made; *and provided, also*, that the only questions to be submitted to and determined by the jury in trials for forcible entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side.

Unless three
years' pos-
session.

Title not ex-
aminable.

§ 4454. Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol (except horseman's pistols), dirk, sword in a cane, spear, bowie knife, or any other kind of knives manufactured and sold for the purpose of offense and defense, shall be guilty of a misdemeanor, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Carrying
concealed,
deadly wea-
pons.

§ 4455. All other offenses against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment, in every such case, shall be [as prescribed in Section 4245 of this Code.] (a)

Other of-
fenses vs.
public peace.

TENTH DIVISION.

OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH, POLICE, ETC.

SECTION.

- 4456. Bigamy.
- 4457. Punishment on married person.
- 4458. On unmarried person.
- 4459. Incest.
- 4460. Adultery.
- 4461. Lewdness.
- 4462. Lewd houses.
- 4463. Disorderly houses.
- 4464. Gaming houses.
- 4465. Gaming tables.
- 4466. Gambling.
- 4467. Gaming with minors.
- 4468. Gaming with clerks and bank off'rs.
- 4469. Players—witnesses.
- 4470. Judge's charge.
- 4471. Suspected houses.
- 4472. Unwholesome provisions.
- 4473. Unwholesome bread, etc.
- 4474. Spreading small pox.
- 4475. Violating quarantine.
- 4476. Vagrants.
- 4477. Common rogues.

SECTION.

- 4478. Nuisances.
- 4479. Disinterring bodies.
- 4480. Bastardy.
- 4481. Retailing without license.
- 4482. Illegal marrying.
- 4483. Marrying white and colored.
- 4484. Illegal voting.
- 4485. Buying or selling votes.
- 4486. Minor voting.
- 4487. Adultery with negroes.
- 4488. Whipping wife.
- 4489. Interfering with religious worship.
- 4490. Retailing near church.
- 4491. Vending near camp grounds.
- 4492. Running freight trains on Sunday.
- 4493. Violating Sabbath.
- 4494. Illegal bathing.
- 4495. Fines from Sabbath-breakers.
- 4496. Bonds in case of vagrancy.
- 4497. Att'y or Sol'r—duty in such case.
- 4498. Water and light on railroads.

* See Section 4608. (a) Acts of 1865-6, p. 233.

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

Am. Crime Law *Admission of former marriage*
 § 4456. Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands or wives at the same time.

Punishment
—if before
married.

§ 4457. If any person or persons within this State, being married, do or shall at any time hereafter marry any person or persons, the lawful husband or wife being alive, and knowing that such lawful husband or wife is living, such person or persons so offending shall, on conviction, be punished by confinement at labor in the penitentiary, for any time not less than two years nor longer than four years, and the second marriage shall be void; but five years' absence of the husband or wife, and no information of the fate of such husband or wife, shall be sufficient cause of acquittal of the person indicted; and in every case the issue of such second marriage, born before the commencement of any prosecution for polygamy, or within the ordinary time of gestation thereafter, shall, notwithstanding the invalidity of such marriage, be considered as legitimate.

Five years' absence.

§ 4458. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another person, such man or woman shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year nor longer than three years.

Punishment
—if before
unmarried.

11-4-53.
 Incest.

§ 4459. If any person shall commit incestuous fornication or adultery, or intermarry within the Levitical degrees of consanguinity, or affinity, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one nor longer than three years, and such marriage shall be void.

22-12-56.
 Adultery
and fornication.

§ 4460. Any man and woman who shall live together in a state of adultery or fornication, or of adultery and fornication, or who shall otherwise commit adultery or fornication, or adultery and fornication, shall be severally indicted, and, on conviction, such offenders shall be severally [punished as prescribed in Section 4245 of this Code;] (a) but it shall, at any time, be within the power of the parties to prevent or suspend the prosecution and the punishment by marriage, if such marriage can be legally solemnized.

8-4-26
10-4-38.
1-11-201.
 Lewdness
and keep-
ing tippling
houses.

§ 4461. Any person who shall be guilty of open lewdness, or any notorious act of public indecency tending to debauch the morals, or of keeping open tippling houses on the Sabbath day or Sabbath night, shall, on conviction, be [punished as prescribed in Section 4245 of this Code.] (a)

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§ 4462. If any person shall maintain and keep a lewd house, or place for the practice of fornication or adultery, either by himself, or herself, or others, he or she so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

35-4m187
Lewd
houses.
35-4m187
36-280

§ 4463. Any person who shall keep and maintain, either by himself, or herself, or others, a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, or other misbehavior, or to the common disturbance of the neighborhood or orderly citizens, such person so offending shall, on conviction, be [punished as prescribed in Section 4245 of this Code.] (a)

Disorder-
ly houses.
P.M.O.V.

§ 4464. If any person shall, by himself, servant, or agent, keep, have, use, or maintain a gaming-house, or room, or shall, in any house, place, or room, occupied by him, permit persons with his knowledge to come together and play for money, or any other valuable thing, at any game of faro, loo, brag, bluff, or any other game played with cards, or shall knowingly rent or let any house or room, with the view or expectation of the same being used for such purpose, such person so offending shall, on conviction, be [punished as prescribed in Section 4245 of this Code.] (a)

84m403
Gaming
houses—fine
and imprison-
ment.
37-4m280
18-4m396
18-4m396
34-205
22-101

§ 4465. If any person shall, by himself, or servant, or any other agent, keep or employ any faro table, E O table, or A B C or roulette table, or other table of like character, and shall, either by himself or agent, preside or deal at any faro table, or use any E O or A B C or roulette table, or other table of like character, for the purpose of playing and betting at the same, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Gaming
tables.

§ 4466. If any person shall play and bet for money, or other thing of value, at any game of faro, loo, brag, bluff, three-up, seven-up, poker, vintgun, euchre, or any other game or games played with cards, or shall play and bet for money, or other thing of value, at any E O or A B C table, or at other table of like character, or at roulette, or *rouge et noir*, or chuckluck, or any similar game of chance played with dice, or cards or balls, or shall bet at any game of nine-pins or ten-pins, or at any other number of pins, or at any billiard or pool table, such person so offending, on conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a)

Gambling.
29-4m
203

§ 4467. Any person keeping any table, or dealing at any game,

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

With minors as above specified, who shall permit any minor to play and bet thereat, or any person of full age who shall gamble with a minor at any of the games above specified, shall, on conviction, be [punished as prescribed in Section 4245 of this Code.] (a)

§ 4468. The provisions of the above Section shall extend to all persons gaming with the officer or agent of any bank entrusted with any of its funds, or any clerk in any post-office in this State.

§ 4469. On the trial of any person for offending against the five preceding Sections of this Division, any other person who may have played and betted at the same time or table, shall be a competent witness, and be compelled to give evidence; and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified.

§ 4470. It shall be the duty of the Judges of the Superior Courts of this State, at the opening or commencement of every Court, to give in charge to the Grand Juries, respectively, the substance of the Sections contained in this Code relative to gambling.

§ 4471. It shall be lawful for any lawful officer, with legal authority, to break open suspected rooms or houses, where it is commonly known that gaming is carried on, and to take any persons found gaming, and bind or cause them to be bound over to the next Superior Court to be held in and for the County where such offenses may be committed; and if such person, so found gaming, shall fail or refuse to give security for his or their appearance at Court, to answer for such offenses, then it shall be lawful to commit such person or persons to jail.

§ 4472. Any butcher or other person selling the flesh of a diseased animal, or other unwholesome provisions, shall be indicted, and, on conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a)

§ 4473. Any baker, brewer, distiller, merchant, grocer, or other person, selling unwholesome bread, drink, or pernicious and adulterated liquor, knowing them to be so, shall be indicted, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a).

§ 4474. Any physician, surgeon, or other person, willfully en-

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deavoring to spread the small-pox, without inoculation, ^{Spreading small pox.} or by inoculation with matter of the small-pox, or using any other inoculation than that called vaccination, unless by special commission or authority from the Inferior Court of the County where the small-pox shall make its appearance, shall be indicted, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4475. Any person who shall come into this State, by land or ^{Violation of quarantine.} water, from any place infected with a contagious disease, and in violation of quarantine regulations, shall be indicted in any County in this State in which he may be found, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4476. [All persons wandering or strolling about in idleness, who are able to work and have no property to support them; all persons leading an idle, immoral, or profligate life, who have no property to support them, and who are able to work, and who do not work; all persons able to work, having no property to support them, and who have not some visible and known means of a fair, honest, and reputable livelihood; all persons having a fixed abode, who have no visible property to support them, and who live by stealing, or by trading in, bartering for, or buying, stolen property. and all professional gamblers living in idleness, shall be deemed and considered vagrants, and shall be indicted as such; and it shall be lawful for any person to arrest said vagrants, and ^{May be arrested.} have them bound over for trial to the next term of the County Court, and, upon conviction, they shall be fined or imprisoned, or sentenced to work on the public works or roads for not longer ^{Punishment} than a year, or shall, in the discretion of the Court, be bound out to some person for a time not longer than one year, upon such valuable consideration as the Court may prescribe—the person giving bond in a sum not exceeding three hundred dollars, payable to said Court, and conditioned to clothe and feed, and provide said convict with medical attendance for and during said time; * *provided*, that the defendant may, at any time before conviction, be discharged upon paying costs and giving bond and security in a sum not exceeding two hundred dollars, payable to said Court, and conditioned for the good behavior and industry of the defendant for one year.] (b) ^{Proviso.}

^{Defendant may be discharged on giving bond.}

(a) Acts of 1865-6, p. 233. * See Section 4608, as to punishment. (b) Acts of 1865-6, pp. 234-5.

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

§ 4477. If any person shall be apprehended, having upon him or her any picklock, key, crow, bit, or other instrument, with intent to break and enter into any dwelling-house, warehouse, store, shop, coach-house, stable, or out-house, in order to steal or commit any other crime—or, shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to commit crime on any person which, if committed, would be punishable by death or confinement in the penitentiary—or, shall be found in or upon any dwelling-house, warehouse, store, shop, coach-house, stable, or out-house, with intent to steal any goods or chattels, every such person shall be deemed a rogue and a vagabond, and, on conviction, shall be punished by confinement and labor in the penitentiary for any time not less than one year nor longer than five years, or by imprisonment in the common jail of the County, at the discretion of the Court.*

Having possession of false keys, picklocks, etc.

42
What nuisances are indictable.

§ 4478. Any person who shall erect, or continue, after notice to abate any nuisance which tends to annoy the community, or injure the health of the citizens in general, or to corrupt the public morals, shall be indictable and punishable [as prescribed in Section 4245 of this Code.]

Disinterring or purchasing dead bodies.

§ 4479. If any person or persons shall remove the dead body of a human being from the grave or other place of interment, or from any vault, tomb, or sepulcher, or from any other place, without the consent of the friends of said deceased, except malefactors executed under the sentence of the law, for the purpose of selling or dissecting the same, or from mere wantonness, such person or persons so offending shall be punished [as prescribed in Section 4245 of this Code;] (a) and any person who shall receive or purchase such dead body, knowing it to have been disinterred or removed from any tomb, vault, or sepulcher, or such other place, for the purpose aforesaid, shall, on conviction, receive the same punishment.

Putative father refusing

§ 4480. If any putative father of a bastard child or children shall refuse or fail to give security for the maintenance and education of such child or children, when required to do so in terms of the law, such putative father shall be indicted for a misdemeanor, and, on conviction of the fact of being the father of such bastard child or children, and of his failure or refusal to give such

* See Section 4608. (a) Acts of 1865-6, p. 233.

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security, he shall be punished [as prescribed in Section 4245 of this Code; and if fined,] (a) said fine shall be paid over to the Inferior Court of the County, to be by them improved and applied from time to time, as occasion may require, for the maintenance and education of such child or children.

§ 4481. If any person shall keep a tippling shop, or sell by the quart without the license, and taking the oath prescribed in this Code, or sell by retail in quantities less than one quart, any wine, brandy, rum, gin, whisky, or other spirituous liquors, or any mixture of such liquors, in any house, booth, arbor, stall, or other place whatever, without license from the Inferior Court of the County, or without license from the corporate authorities of any town or city, where, by law, authority to grant licenses is vested in the corporate authorities of such towns or cities, such person so offending shall be guilty of a misdemeanor, and on conviction, [shall be punished as prescribed in Section 4245 of this Code;] (a) *provided*, no person shall be liable to indictment in the Superior Courts of this State for a violation of this Section when said person has been already tried by the corporate authorities for the same offense.

§ 4482. If any minister of the gospel, Judge, Justice of the Inferior Court, or Justice of the Peace, shall join together in matrimony any man and woman, without a license or publication of banns, as provided by law, or where either of the parties within his own knowledge shall be an idiot or lunatic, or subject to any other disability, under this Code, which would render such contract or marriage improper and illegal, such minister, Judge, Justice of the Inferior Court, or Justice of the Peace, shall be guilty of a misdemeanor, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code, and if fined,] (a) said fine, when collected, shall be paid over to the Justices of the Inferior Court of the County where the offense was committed, for the use of the common school fund of said County.

§ 4483. [If any officer shall knowingly issue any marriage license to parties, either of whom is of African descent, and the other a white person, or if any officer or minister of the gospel shall marry such persons together, such officer or minister of the gospel shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as prescribed in Section 4245 of this Code.] (b)

Dringlish
Retailing
spirits with-
out license.

Marrying
illegally or
without li-
cense.

Intermar-
riage of
whites and
colored peo-
ple prohib-
ited.

(a) Acts of 1865-6, p. 233. (b) Acts of 1865-6, p. 241.

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

§ 4484. If any person shall hereafter vote more than once at any election which may be held in any County of this State, or vote out of the County in which he may usually reside, for members of the Legislature, or for County officers, unless authorized by law, such person shall be indicted for a misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than two years.

§ 4485. If any person shall hereafter buy or sell, or offer to buy or sell a vote, or be concerned in buying or selling a vote, or shall unlawfully vote at any election which may be held in any County in this State, such persons shall be indicted for a misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for a term not less than one year nor more than four years.

§ 4486. If any person under the age of twenty-one years and above the age of fourteen, shall vote illegally at any election, he shall be [punished as prescribed in Section 4245 of this Code.] (a)

§ 4487. Any white man and woman of color, [or any white woman and male person of color] (b) who shall live together in a state of adultery or fornication, or adultery and fornication, such [persons so offending] (b) shall be guilty of the crime of living in such state, and on conviction shall be [punished as prescribed in Section 4245 of this Code.] (a)

§ 4488. If any man shall whip beat, or otherwise cruelly maltreat his wife, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a) On such trials the wife shall be a competent witness.*

§ 4489. Any person who shall, by cursing or using profane or obscene language, or by being intoxicated or otherwise indecently acting, interrupt or in any manner disturb any congregation of persons lawfully assembled for divine service, shall be guilty of a misdemeanor, and on conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a) †

§ 4490. Any person who shall sell, or cause to be sold for him,

(a) Acts of 1865-6, p. 233. (b) Acts of 1861, p. 68.

* As to competency of witnesses, see Section 3798. Does not that Section repeal the last sentence of this?

† As to the protection of other societies, see Acts of 1855-6, p. 272.

Illegal voting by a minor.

Adultery with negro.

Whipping wife.

Interfering with religious worship.

4489 (a) 71, special days Act 71

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

any spirituous or intoxicating liquors, within one mile of any church or meeting-house, or other place set apart or being used for divine worship, during the time appropriated to such worship (unless the same be within an incorporated city or town), shall be guilty of a misdemeanor, and, on conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a)

Selling spir-
its within a
mile of a
church.

§ 4491. [It shall not be lawful for any person to vend or expose to sale during the period of divine worship, within one mile of the place of worship, in any camp ground in this State, any article, commodity, or thing whatever, without the written consent of a majority of the trustees, commissioners, or owners of such camp ground, under penalty of being indicted, and, on conviction, shall be punished as prescribed in Section 4245 of this Code.] (b)

Vending
near camp
grounds.

§ 4492. If any freight train shall be run on any railroad in this State on the Sabbath day (known as Sunday), the superintendent of transportation of such railroad company, or the officer having charge of that department of the business of the railroad, shall be liable to indictment for a misdemeanor in each County through which such train shall pass, and, on conviction, shall be for each offense [punished as prescribed in Section 4245 of this Code.] (a)

Running
freight trains
on Sabbath
day.

§ 4493. Any tradesman, artificer, workman, or laborer, or other person whatever, who shall pursue their business or work of their ordinary callings upon the Lord's day (works of necessity or charity only excepted), shall be guilty of a misdemeanor, and, on conviction, shall be [punished as prescribed in Section 4245 of this Code.] (a)

Violating
Sabbath.

§ 4494. [Any person who shall bathe in any stream or pond of water on the Sabbath day, in view of any road or passway, leading to or from any house of religious worship, shall be considered guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the common jail of the County, at the discretion of the Court, not exceeding six months.] (c)

Indecent
bathing.

Division 10.—Offenses Against the Public Morality, Health, Police, and Decency.

§ 4495. All moneys arising from fines imposed for offenses, the Fines for violation of the Sabbath. gist of which consists in their being committed on the Sabbath day, shall be paid to the Ordinary of the County, to be by him distributed for the purpose of establishing and promoting Sabbath schools in the County.

§ 4496. When any person prosecuted as a vagrant shall give Bond in cases of vagrancy. bond and security in terms of this Code, and shall violate the conditions of said bond, and that fact shall be made to appear to the Court where said indictment was found, by the affidavit or the prosecutor, or any other person, it shall be the duty of the Court to cause a *scire facias* to issue, calling upon the principal in said bond, and his security, to show cause at the next term of said Court, why said bond shall not be forfeited, which shall be served as in cases of bail; on which an issue shall be made up if desired by the defendant and tried by a jury; and if it shall appear that said defendant has violated the conditions in said bond, judgment shall be awarded on said *scire facias* against said principal and his securities for the penalty in said bond, with costs of suit.

§ 4497. It shall be the duty of the Attorney and Solicitors Solicitor's duty and fees. General, to represent the State in all suits on bonds as aforesaid; and he shall receive five dollars for prosecuting the *scire facias*, to be taxed in the bill of costs, and also five per cent. of the amount recovered on said bond.

§ 4498. [All railroad companies in this State, as well as the Water and light on railroads. Western and Atlantic Railroad, shall keep in each passenger car, or in any car in which passengers are transported, an adequate supply of good, pure drinking water at all hours during the day and night, and lights during the night for the use of passengers; and upon failure thereof, shall be subject to pay a fine of one hundred dollars for each and every offense. Any conductor or agent of said roads being requested by any passenger to furnish a sufficient supply of water to the passengers in each car, in the day or night, and light at night, and shall pass any depot or station without so doing, shall be liable to be indicted in any County through which said railroad runs, of which he is agent or conductor, and, upon conviction, shall be liable to the punishment prescribed in Section 4245 of this Code. It shall be the duty of the Judges of the Superior Courts of this State to give the law of this Section in special charge to the Grand Juries of their respective Courts.] (a)

Division 11.—Offenses Committed by Cheats and Swindlers, etc.

ELEVENTH DIVISION.

OFFENSES COMMITTED BY CHEATS AND SWINDLERS, AND OFFENSES
AGAINST PUBLIC TRADE.

SECTION.

- 4499. Credit by fraud.
- 4500. Cheating at play.
- 4501. Baker's cheating.
- 4502. False weights.
- 4503. Forestalling, etc.
- 4504. Counterfeiting brands.
- 4505. Dirt in cotton, etc.
- 4506. Personating another.

SECTION.

- 4507. Similar offenses.
- 4508. Personating witness.
- 4509. Lying to obtain security.
- 4510. Peddlers without license.
- 4511. Deceiving as to lien.
- 4512. Illegally measuring lumber.
- 4513. Overcharges by railroad agents.
- 4514. Carrier's receipt.

§ 4499. If any person by false representation of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit and thereby defraud any person or persons of any money, goods, chattels, or any other valuable thing, or if any person shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person or persons, shall obtain a credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any other valuable thing or things, such person so offending shall be deemed a cheat and swindler, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the County, or both, at the discretion of the Court; and such person shall, moreover, be compelled by the order and sentence of the Court to restore to the party injured the property so fraudulently obtained, if it can be done.*

Persons
fraudulently
obtaining
credit.

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§ 4500. If any person or persons shall by any fraud, or shift, circumvention, deceit, or unlawful trick, or device, or ill-practice, whatever, in playing at cards, dice, or any game or games, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, obtain, or acquire to him or themselves, or to any other or others, any money, or other valuable thing or things, whatever, such person or persons so offending, shall be indicted, and, on conviction, shall be deemed a cheat, and shall be [punished as prescribed in Section 4245 of this Code.] (a)

Persons
cheating at
play.

§ 4501. Any baker or other person selling bread, under the assize established by the corporation of any city, town, or village,

Bakers and
others sell-
ing.

* See Section 4608. (a) Acts of 1865-6, p. 233.

Division 11.—Offenses Committed by Cheats and Swindlers, etc.

or the rules laid down by any law, shall be deemed a cheat, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Selling by false weights and measures § 4502. If any person shall knowingly buy or sell by false weights, or measures, he or she shall be deemed a common cheat, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Forestalling, etc. § 4503. [Any person charged with the offenses known to the common law as forestalling, regrating, or engrossing, may be indicted in any Superior, Corporation, or other Court having jurisdiction thereof, and, on conviction, shall be punished as prescribed in Section 4245 of this Code.] (b)

Counterfeiting brands or marks, etc. § 4504. If any person shall fraudulently counterfeit, or be concerned in fraudulently counterfeiting any brand or mark directed by law, or shall fraudulently cause or procure the same to be done, or shall use, export, sell, exchange, barter, or expose to sale, any bale, cask, barrel, hogshead, or vessel of any kind, or any other thing upon which a brand or mark is directed by law to be made, with such counterfeit brand or mark, knowing the same to be false and counterfeit, such person so offending shall, on conviction, be deemed a cheat, and be punished [as prescribed in Section 4245 of this Code.] (a)

Putting dirt or rubbish into cotton, rice, etc. § 4505. Any person who shall put, or cause to be put into any bale or bales of cotton, hogshead or hogsheads, barrel or barrels, cask or casks of sugar, or rice, pork, beef, or other provisions, any dirt, rubbish, or other thing, for the purpose of adding to and increasing the weight or bulk of said cotton, sugar, rice, beef, pork, or other provisions or things, shall be deemed a common cheat, and, on conviction, shall be punished by a fine equal to the value of the thing thus fraudulently packed or put up, and imprisonment and labor in the penitentiary for any time not less than one year nor more than five years.* The bare possession or ownership of such commodities, so fraudulently packed or put up, shall not, of itself, authorize a conviction, where sufficient evidence of knowledge or privity on the part of the owner, or the person in possession, may not be produced before the Court and jury.

§ 4506. If any person shall falsely personate another, and thereby fraudulently obtain any money, goods, chattels, or other

(a) Acts of 1865-6, p. 233. (b) Acts of 1863-4, p. 46. * See Section 4608.

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Division 11.—Offenses Committed by Cheats and Swindlers, etc.

thing or things of value, or with the intention of thereby fraudulently obtaining any money, goods, chattels, or other valuable thing, such person so offending shall be deemed a cheat and swindler, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than five years; or, in trivial cases, by fine and imprisonment in the common jail, at the discretion of the Court.*

Obtaining
goods, etc.
by person-
ating.

§ 4507. Any person using any deceitful means or artful practice (other than those which are mentioned and provided against in this Code), by which individuals, or an individual, or the public, are or is defrauded and cheated, such person so offending shall be deemed a common cheat and swindler, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Other offen-
ses of like
kind.

§ 4508. If any person shall falsely represent or personate another, and in such assumed character answer as a witness to interrogatories, or do any other act in the course of any suit, proceeding, or prosecution, or in any other way, matter or thing, whereby the person so personated or represented, or any other person, might suffer damage, loss, or injury, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year, nor more than five years.

Personating
another as
witness or
otherwise in
Court.

§ 4509. If any person, by false representation of his or her solvency, shall induce another to become his or her bail, indorser, or security, upon any recognizance, bond, note, bill of exchange, or other instrument for the payment of money, or performance of any personal duty, knowing at the time that he or she is insolvent, and such bail, indorser, or security, shall suffer loss or damage, in consequence of such undertaking and liability on his part, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Lying to ob-
tain indors-
ers or other
security.

§ 4510. If any peddler, or itinerant trader, shall sell or vend any goods, wares, or merchandise, except such as are excepted by law, within this State, without a license from the proper authority for that purpose, such peddler, or itinerant trader, shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Dealers
without
license.

* See Section 4608. (a) Acts of 1865-6, p. 233.

Division 11.—Offenses Committed by Cheats and Swindlers, etc.

Deceiving
as to exist-
ence of lien. § 4511. Any person who shall, in the sale or disposing of any property, either real or personal, defraud another by falsely representing that such property is not subject to the lien of any mortgage or judgment, or other lien against such person or property, knowing the same to be subject thereto, [or who shall fraudulently make a second deed of conveyance to any land or real estate to another, shall be deemed and held a common cheat and swindler, and, on conviction, shall be punished as prescribed in Section 4245 of this Code.] (a)

Illegally
measuring
lumber. § 4512. If any measurer and inspector of timber, appointed under the laws of this State, or any person not being an official measurer and inspector, shall measure any timber otherwise than as required by the laws of this State, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense [as prescribed in Section 4245 of this Code;] (b) *provided* that this provision shall not apply to any case when the measurement is not for the purpose of being used in the sale of the timber, or to any case where the parties buying and selling contract to have the timber measured other than according to the laws of this State.

Railroad of-
ficials over-
charging. § 4513. [Any officer, agent, or other employee of any railroad company in this State, who shall charge for transporting freight or passengers over said railroad above the rates allowed by their several charters, or established by the superintendent, or other officer or officers of said railroad, shall be guilty of a misdemeanor, and, on indictment and conviction before the Superior Court in any County having jurisdiction thereof, shall be punished as prescribed in Section 4245 of this Code.] (c)

Guilty of
misdemean-
or. Punishment

Railroad and
other trans-
portation
companies
must furnish
receipts. § 4514. [Whenever any person shall deliver any article, thing, commodity, or property of any description, to any railroad, steamboat, or express company, in this State, for transportation, it shall be the duty of said company, upon demand, to furnish the party so delivering a good and valid receipt for the same, with proper revenue stamps attached thereto; and said receipt shall specify the weight of said article, thing, commodity, or property, thus delivered, whenever the value can be estimated by weight; and in all cases where the value can not be thus estimated, the receipt shall give a general description of said article, thing, commodity, or property, and shall also specify as near as practicable the quantity

Weight, etc.
to be speci-
fied—when.

Division 12.—Fraudulent or Malicious Mischief.

or value thereof, and also the place of destination; and any agent or officer of any railroad, steamboat, or express company, violating the provisions of this Section, shall be deemed and considered guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by fine or imprisonment, or both, in the discretion of the Court—the fine not to be less than one hundred dollars nor more than two thousand dollars, and the imprisonment not to exceed sixty days.] (a) Effect of violation.

TWELFTH DIVISION.

FRAUDULENT OR MALICIOUS MISCHIEF.

SECTION.

- 4515. Destroying books or papers.
- 4516. Altering landmarks.
- 4517. Buoys, beacons, etc.
- 4518. Setting fire to stacks.
- 4519. Setting fire to woods.
- 4520. Setting fire to fences.
- 4521. Breaking bridges, dams, etc.
- 4522. Killing or maiming cattle.
- 4523. Turnpikes, fixtures, etc.
- 4524. Firing or sinking vessels.

SECTION.

- 4525. Cutting down trees.
- 4526. Mile or guide-posts.
- 4527. Obstructing highway.
- 4528. Destroying growing crop.
- 4529. Fixtures of coast survey.
- 4530. Public burying-grounds.
- 4531. Private burying-grounds.
- 4532. Injuring fish-ponds.
- 4533. Poisoning fish.
- 4534. Other similar acts.

§4515. If any person shall fraudulently or maliciously tear, burn, or in any other way destroy, any deed, lease, will, bond, or other writing sealed, or any bank bill or note, check, draft, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this State, or of the United States, or any of them, for the payment of money, or any receipt, acquittance, release, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of accounts, or any agreement or contract whatever, with intent to defraud, prejudice, or injure any person, or body politic or corporate, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years; or, in trivial cases, by imprisonment in the common jail, or by fine, or both, at the discretion of the Court.* Destroying books or papers of value

§4516. If any person shall, knowingly, maliciously, or fraudulently, cut, fell, alter, or remove, any certain boundary tree, or other allowed landmark, to the wrong or injury of his neighbor, Altering or removing landmarks.

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Division 12.—Fraudulent or Malicious Mischief.

or any other person, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Buoys, beacons, etc. § 4517. If any person or persons shall, maliciously or without authority, cut down, remove, or destroy, any beacon or beacons, buoy or buoys, erected by any commissioners of pilotage, or other person or persons duly authorized for that purpose, such person or persons so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years.

Setting fire to stacks. § 4518. Any person or persons who shall willfully and maliciously set fire to, or burn any stack or stacks of corn, fodder, grain, straw, or hay, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

Setting fire to woods. § 4519. If any person shall willfully and maliciously set on fire, or cause to be set on fire, any woods, lands, or marshes, within this State, so as thereby to occasion loss, damage, or injury, to any other person, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Fences. § 4520. If any person shall willfully and maliciously set fire to any fence or fences, or other inclosure, or cause or procure the same to be done, or shall take from such fence or inclosure any rail or rails, or other material of which the same is made or composed, for the purpose of using the same as fuel, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

Breaking bridges, dams, banks, etc. § 4521. If any person shall unlawfully, willfully, and maliciously break down, cut open, through, injure, or destroy any bridge, river, or meadow bank, rice-dam, mill-dam, or any other dam or bank, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary not less than one year, nor longer than three years, or by fine and imprisonment in the common jail, at the discretion of the Court.*

Killing or maiming cattle or hogs. § 4522. If any person shall maliciously maim or kill any horse, mule, bull, steer, ox, cow, calf, heifer, or other animal falling under the description hereinbefore given of horses or cattle, or shall maliciously kill a hog or hogs, such person so offending shall, on conviction, be punished [as prescribed in Section 4245 of this Code.] (a)

(a) Acts of 1865-6, p. 233. * See Section 4608.

Division 12.—Fraudulent or Malicious Mischief.

§ 4523. If any person shall maliciously injure or destroy any ^{Turnpike and navigation fixtures.} turnpike gate or gates, or any post or posts, rail or rails, wall or walls, or any chain, bar, or other fence belonging to any turnpike gate, or any house or houses, erected or to be erected, for the use of any such turnpike gate or gates, or shall willfully and maliciously injure or destroy any lock or locks, or other works erected to protect and secure the navigation of any river or canal in this State, every such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.

§ 4524. If any person shall willfully and maliciously burn, or ^{Firing or sinking vessels.} set fire to any ship, boat, or other vessel above the value of two hundred dollars, along side of any wharf, or at anchor in any river, or in any waters in this State, or if any person shall willfully and maliciously make, or assist in making any hole in the bottom, side, or any part of any ship, boat, or other vessel, above the value aforesaid, or do any other act tending to the loss or destruction of such ship, boat, or other vessel, within the waters of this State as aforesaid, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than three years nor longer than seven years; and if the ship, boat, or other vessel thus injured or destroyed, as aforesaid, be of the value of two hundred dollars, or under that value, then the person convicted of injuring or destroying such ship, boat, or other vessel, as aforesaid, [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4525. If any person shall willfully and maliciously cut down, ^{Cutting down trees.} injure or destroy any tree or trees planted or growing in any town, village, or city, or in any avenue, yard, garden, orchard, or plantation, for ornament, shelter, shade, or profit, such person so offending, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4526. If any person shall willfully or maliciously break, deface, destroy, or remove any mile-stone or post, or any guide-board, ^{Mile or guide-posts.} erected upon any public road or highway, or alter any mark or inscription upon any such mile-stone or post, or guide-board, such person so offending shall be indicted for a misdemeanor, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

§ 4527. Any person who shall stop up or obstruct a public high-

Division 12.—Fraudulent or Malicious Mischief.

Obstructing way, with a malicious intent, or shall do the same acts without highway.
such intent, and fail to remove the same on notice from the overseer or commissioner of the road, shall be guilty of malicious mischief, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

Severing produce from the realty. § 4528. If any person shall commit any trespass by willfully and maliciously severing from the land of another any produce thereof, such person so offending shall be indicted for a misdemeanor, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

Injuries to coast survey fixtures. § 4529. Any person who shall willfully or wantonly injure, deface, or remove any signal, monument, building, or any other appendage thereto, erected within this State by virtue of any act of Congress authorizing a coast survey, shall be guilty of a misdemeanor, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

Injuries to public burying-grounds. § 4530. Any person who shall willfully or wantonly injure or destroy any inclosure around or within any public grave-yard or burying-ground, or any monument or tombstone, or other fixture therein, shall be guilty of a misdemeanor, and on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

Disturbing private burying-grounds. § 4531. Any person who, by himself, his agent or servants, shall mutilate, or in anywise injure or destroy, any private burying-ground which has been reserved in any private or public sale of the surrounding land, shall be guilty of a misdemeanor, and, on conviction, [shall be punished as prescribed in Section 4245 of this Code.] (a)

Injuring fish-pond. § 4532. Any person willfully and maliciously breaking the dam or destroying the fish, or fishing therein, or otherwise injuring any artificial fish-pond, shall be guilty of a misdemeanor, and, on conviction, shall be punished [as prescribed in Section 4245 of this Code.] (a)

Poisoning fish. § 4533. [Any person who shall poison any lake, river, stream, or pond, in any of the Counties of this State, or either of them, with a view of poisoning fish therein, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as prescribed in Section 4245 of this Code.] (b)

All other acts of malicious mischief. § 4534. All other acts of willful and malicious mischief, in the injuring or destroying any other public or private property, not herein enumerated, shall be punished [as prescribed in Section 4245 of this Code.] (a)

(a) Acts of 1865-6, p. 233. (b) Acts of 1862-3, p. 46.

Injuring ditcher act of 1866

Division 13.—Of Indictments, Arraignments, etc.

THIRTEENTH DIVISION.

OF INDICTMENTS, ARRAIGNMENTS, TRIAL, VERDICT, JUDGMENT, AND
EXECUTION.

SECTION.

- 4535. Form of indictment.
- 4536. Exceptions.
- 4537. Malicious prosecution.
- 4538. Costs paid by County.
- 4539. Prosecution on presentments.
- 4540. Arraignments in small offenses.
- 4541. Copy, indictment, and witnesses.
- 4542. In minor offenses.
- 4543. Arraignments.
- 4544. Standing mute.
- 4545. Demurrers and special pleas.
- 4546. Record of issue.
- 4547. Entry on indictment.
- 4548. Arraignment in fetters.
- 4549. Challenges.
- 4550. In minor offenses.
- 4551. Order of argument.
- 4552. Jury judges of law.
- 4553. Time of trial—continuance.
- 4554. Demand for trial.
- 4555. Nolle prosequi.
- 4556. Juror's oath.
- 4557. Witness's oath.
- 4558. Before Grand Jury.
- 4559. Several imprisonments.
- 4560. Fine money.
- 4561. Paid immediately.
- 4562. Discretionary imprisonment in pen.
- 4563. Convicts sent to penitentiary.
- 4564. Notice to keeper.
- 4565. Escapes therefrom.
- 4566. Confinement in jail.
- 4567. No benefit of clergy.
- 4568. Death by hanging—mode of exec'n.
- 4569. Judge's report.
- 4570. Punished under existing laws.
- 4571. Limitation on indictments.
- 4572. Insane convicts.
- 4573. Pregnant convicts.
- 4574. Subsequent execution.

SECTION.

- 4575. Date from sentence.
- 4576. Offenses on County lines.
- 4577. Death in another County.
- 4578. Or on soil of U. S.
- 4579. Insane offender.
- 4580. Act not attempt.
- 4581. Jury may find attempt.
- 4582. Two convictions—longest time.
- 4583. Convicts witnesses.
- 4584. Impanneling jury.
- 4585. Talesmen.
- 4586. Putting panel on prisoners.
- 4587. Challenge to the array.
- 4588. Challenge for cause.
- 4589. Questions on *voir dire*.
- 4590. Setting aside for cause.
- 4591. Swearing in chief.
- 4592. No investigation before triers.
- 4593. Change of venue.
- 4594. Pen'y confinement disqualification.
- 4595. Joint defendants.
- 4596. Continuance by one.
- 4597. Opprobrious words.
- 4598. Oath on inquests of insanity.
- 4599. Abstract of evidence.
- 4600. Form of sentence.
- 4601. Commutation for good behavior.
- 4602. Collection of costs.
- 4603. Discharge of insolvents.
- 4604. Bail taken twice.
- 4605. Forfeiting recognizance.
- 4606. Proceedings against bail.
- 4607. Surrender by bail.
- 4608. Punishment in minor offenses.
- 4609. Settlement of minor offenses.
- 4610. Of all others.
- 4611. Excessive costs.
- 4612. Two returns of "No bill."
- 4613. Insolvent costs.

§ 4535. Every indictment or accusation of the Grand Jury shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this Code, or so plainly that the nature of the offense charged may be easily understood by the jury. The form of every indictment or accusation shall be as follows:

"GEORGIA,
____ COUNTY. }

"The Grand Jurors selected, chosen, and sworn for the County

shall must from any allegation of reasonable doubt

Actu for a quit

*389a 187
14 1/2*

164a 467-600.

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Not given
but discuss
him*

Character of the offense

31 Ga 206.

36 Ga 191

Division 13.—Of Indictments, Arraignments, etc.

Form of the first count. of —, to wit: —, in the name and behalf of the citizens of Georgia, charge and accuse A. B., of the County and State afore-said, with the offense of —, for that the said A. B. (here state the offense, and the time and place of committing the same, with sufficient certainty), contrary to the laws of said State, the good order, peace, and dignity thereof."

Subsequent counts. If there should be more than one count, each additional count shall commence with the following form: "And the jurors afore-said, in the name and behalf of the citizens of Georgia, further charge and accuse the said A. B. with having committed the offense of — (here state the offense as before directed), for that," etc.

Exceptions. § 4536. All exceptions which go merely to the form of an indictment shall be made before trial; and no motion in arrest of judgment shall be sustained for any matter not affecting the real merits of the offense charged in such indictment.

Costs to be paid by prosecutor. § 4537. Upon every indictment the prosecutor's name shall be indorsed, who, upon the acquittal or discharge of the person accused, shall be compelled to pay all costs which have accrued, if the Grand Jury, by their foreman, upon returning "No bill," express it as their opinion that the prosecution was unfounded or malicious; or, if the Petit Jury, upon returning a verdict of "Not guilty," shall express a similar opinion.

Persons acquitted and insolvents. § 4538. A person against whom a bill of indictment shall be preferred and not found true by the Grand Jury, or who shall be acquitted by the Petit Jury of the offense charged against him or her, shall not be liable to the payment of the costs; and in all such cases, as also where persons liable by law for the payment of the costs, shall be unable to pay the same, it shall and may be lawful for the officers severally entitled to such costs, to present an account therefor to the Judge of the Court in which the said prosecutions were depending, which account, being examined and allowed by him, it shall and may be lawful for said Judge, by an order of said Court, to authorize and direct the Sheriff or Clerk to retain for his own use, and to pay to the Attorney or Solicitor General, and other officers of the Court, the amount of their respective accounts, out of any moneys by him received for fines inflicted by the said Court, or collected on forfeited recognizances.

§ 4539. It shall be the duty of the Attorney or Solicitor General to prosecute on all presentments of Grand Juries, where such

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presentment or presentments is or are for offenses indictable by law; and the indorsement on the indictment by the Attorney or Solicitor General, that the same is founded on the presentment of a Grand Jury, shall be sufficient, without any prosecutor's name appearing on the indictment. Solicitor General to prosecute upon presentments.

§ 4540. No person indicted, unless it be for an offense which may, on conviction, subject him or her to death, or imprisonment in the penitentiary for the term of three years or more, shall be put for his or her arraignment in the bar-dock, or other place set apart in the Court room for the arraignment of prisoners. Arraignments for small offenses.

§ 4541. Every person charged with a crime or offense which may subject him or her, on conviction, to death or imprisonment in the penitentiary for the term of three years or more, shall be furnished, previous to his or her arraignment, with a copy of the indictment, and a list of the witnesses who gave testimony before the Grand Jury. Copy of indictment and list of witnesses.

§ 4542. Every person charged with an offense shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment, and a list of the witnesses who gave evidence before the Grand Jury. In small cases a copy on request.

§ 4543. Upon the arraignment of a prisoner, the indictment shall be read to him or her, and such prisoner shall be required to answer whether he or she is guilty or not guilty of the offense charged in the said indictment, which answer or plea shall be made orally by the prisoner, or his or her counsel. And if he or she shall plead guilty, such plea shall be immediately recorded on the minutes of the Court by the Clerk, together with the arraignment; and the Court shall pronounce upon such prisoner the judgment of the law, in the same manner as if such prisoner had been convicted of the offense by the verdict of a jury: but, at any time before judgment is pronounced, such prisoner may withdraw the plea of "Guilty," and plead "Not guilty"; and such former plea shall not be given in evidence against him or her on his or her trial. Form of arraignment.

§ 4544. If the prisoner, upon being arraigned, shall plead "Not guilty," or shall stand mute, the Clerk shall immediately record upon the minutes of the Court the plea of "Not guilty," together with the arraignment, and such arraignment and plea shall constitute the issue between the prisoner and the people of this State. Standing mute or pleading not guilty.

§ 4545. If the prisoner, upon being arraigned, shall demur to

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Demurrers or special pleas to be in writing. the indictment, or plead to the jurisdiction of the Court, or in abatement, or any special plea in bar, such demurrer or plea shall be made in writing; and if such demurrer or plea shall be decided against such prisoner, then such prisoner may, nevertheless, plead and rely on the general issue of "Not guilty."

Issue may be recorded afterward. § 4546. If the Clerk shall fail or neglect to record the arraignment and plea of the prisoner at the time the same is made, it may and shall be done at any time afterward, by order of the Court, and this shall cure the error or omission of the Clerk.

To be entered on the indictment. § 4547. The arraignment and plea or answer of the prisoner shall be entered on the indictment by the Attorney or Solicitor General, or other person acting as prosecuting officer on the part of the people of this State.

Prisoners not to be arraigned in fetters. § 4548. No prisoner shall be brought into Court, for arraignment or trial, tied, bound, or fettered, unless the Court shall deem it necessary, during his or her arraignment or trial; and if the health of the prisoner, or other circumstances, should render it more convenient to the prisoner and his counsel that he or she should not be placed for his or her arraignment, or during his or her trial, within the bar-dock, or other place assigned in the Court room for prisoners, the Court may grant the indulgence of removing the prisoner to any other place in the Court room, or contiguous to it, requested by the prisoner or his or her counsel.

Challenges. § 4549. Every person indicted for a crime or offense which may subject him or her, on conviction, to death, or four years' imprisonment or longer in the penitentiary, may peremptorily challenge twenty of the jurors impaneled to try him or her. And every person indicted for an offense which may subject him or her, on conviction, to imprisonment in the penitentiary for any time less than four years, may peremptorily challenge twelve of the jurors impaneled to try him or her; and the State shall be allowed one-half the number of peremptory challenges allowed the prisoner.

In minor offenses. § 4550. In all other cases, the Court shall have a panel of twenty-four jurors, of which the prisoner shall have the right to challenge seven peremptorily, and the State five. The remaining twelve shall constitute the jury.

Order of argument. § 4551. [The order of argument of counsel in criminal cases shall be the same as it now is in civil cases; that is to say, after the testimony is closed on both sides, the State's counsel shall open and conclude the argument to the jury, except in those cases

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in which the defendant shall introduce no testimony—but, in that event, the defendant's counsel shall open and conclude the argument to the jury after the testimony on the part of the State is closed.] (a)

§4552. On every trial of a crime or offense contained in this Code, or for any crime or offense, the jury shall be judges of the law and the fact, and shall, in every case, give a general verdict of "Guilty" or "Not guilty;" and on the acquittal of the defendant or prisoner, no new trial shall, on any account, be granted by the Court.

§4553. Every person against whom a bill of indictment is found shall be tried at the term of the Court at which the indictment is found, unless the absence of a material witness or witnesses, or the principles of justice, should require a postponement of the trial, and then the Court shall allow a postponement of the trial until the next term of the Court; and the Court shall have power to allow the continuance of criminal causes from term to term, as often as the principles of justice may require, upon sufficient cause shown on oath.

§4554. Any person against whom a true bill of indictment is found, for an offense not affecting his or her life, may demand a trial at the term when the indictment is found, or at the next succeeding term thereafter, or at any subsequent term, by special permission of the Court—which demand shall be placed upon the minutes of the Court; and if such person shall not be tried at the term when the demand is made, or at the next succeeding term thereafter, *provided* that at both terms there were juries impaneled and qualified to try such prisoner, then he or she shall be absolutely discharged and acquitted of the offense charged in the indictment.

§4555. No *nolle prosequi* shall be entered on any bill of indictment after the case has been submitted to the jury, except by the consent of the defendant.

§4556. In all criminal cases the following oath shall be administered to the Petit Jury—to wit:

"You shall well and truly try the issue formed upon this bill of indictment between the State of Georgia and A. B., who is charged (here state the crime or offense), and a true verdict give according to evidence. So help you God."

(a) Acts of 1851-2, p. 242.

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§ 4557. The following oath shall be administered to witnesses in criminal cases—viz :

Witness-
es' oath.

“The evidence you shall give to the Court and jury upon the trial of this issue between the State of Georgia and A. B., who is charged with (here state the crime or offense), shall be the truth, the whole truth, and nothing but the truth. So help you God.”

§ 4558. And the following oath shall be administered to witnesses intended to be sent before the Grand Jury :

Oath of wit-
nesses before
Grand Jury.

“The evidence you shall give the Grand Jury on this bill of indictment (or presentment, as the case may be—here state the case,) shall be the truth, the whole truth, and nothing but the truth. So help you God.”

In every case in this Code, the person whose property has been stolen, injured, destroyed, taken away, or fraudulently converted or conveyed, or whose name has been forged to any instrument, or who has received a personal injury, shall be a competent witness on the trial of the offender or offenders.

§ 4559. Where a person shall be prosecuted and convicted on more than one indictment, and the sentences are imprisonment in the penitentiary, such sentences shall be severally executed, the one after the expiration of the other; and the Judge shall specify in each the time when the imprisonment shall commence and the length of its duration.

Several im-
prisonments
to be in suc-
cession.

§ 4560. All fines imposed by this Code, not otherwise appropriated by this Code, shall be paid over by the Clerks of the Superior Court to the Ordinary of the County, for educational purposes in such County, except the County of Chatham, where the said fines shall be paid over to the corporation of the city of Savannah; and the Clerks of the Inferior Courts shall keep a fair account of the fines received, and the time when received, and the names of the persons from whom the said fines were collected.

Fines—to
whom to be
paid and for
what use.

§ 4561. Every fine imposed by the Court under the authority and by virtue of this act shall be immediately paid, or within such reasonable time as the Court may grant.

Paid im-
mediately.

§ 4562. In all cases where the term of punishment in the penitentiary is discretionary, the Court shall determine that punishment, paying due respect to any recommendation which the jury may think proper to make in that regard.

Penitentiary
at discretion
—jury re-
commenda-
tion.

§ 4563. Every person convicted in any County of this State of any crime or offense punishable with confinement in the peniten-

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tiary, shall, as soon as possible after conviction, together with a copy of the record of his or her conviction and sentence, be safely removed and conveyed to the said penitentiary by a guard to be sent therefrom for that purpose, and therein be safely kept during the term specified in the judgment and sentence of the Court.

Convicts soon and safely sent to penitentiary.

§ 4564. In all cases where persons are convicted and sentenced to imprisonment in the penitentiary, it shall be the duty of the Clerks of the Superior Courts of the respective Counties where such persons may be convicted and sentenced, to inform the principal keeper of the penitentiary immediately thereafter by mail, or by private conveyance where there is no post-office in the County, of the conviction and sentence of said convict, and that he or she is detained in the County jail, or under guard, as the case may be, subject to the order of the keeper aforesaid.

Clerk to notify the keeper.

§ 4565. The trial of prisoners escaping from the penitentiary shall be had for such escape before the Superior Court of Baldwin County, and prisoners so escaping shall remain in the penitentiary and be treated as other convicts after their apprehension, until such trial shall take place; and upon such trial, the copies of the records transmitted to the keeper of the penitentiary relative to the former trials of such prisoners shall be produced and filed of record in the said Superior Court of Baldwin County.

Trials for escapes from penitentiary.

§ 4566. When any person may be convicted of any offense which may subject him or her to confinement in the penitentiary, it shall be the duty of the presiding Judge, by his sentence, to order the convict into custody, to be safely kept in jail; or if there be no jail in the County, then in the nearest jail, or under a suitable guard, until he or she shall be demanded by a guard to be sent from the penitentiary for the purpose of conveying such convict to the said penitentiary.

Convicts confined in jail till sent for by penitentiary guard.

§ 4567. No person convicted of a crime in this State shall be allowed the benefit of clergy; and in all cases where the penalty of death is annexed to a crime, the convict shall suffer that punishment.

No benefit of clergy.

§ 4568. The sentence of death shall be executed by hanging the offender by the neck until he is dead. The execution of the sentence shall be in private and witnessed only by the executing officer, a sufficient guard, the relatives of the criminal, and such clergymen and friends as he may desire. The place for such execution shall be provided by the Inferior Court of each County.

Death by hanging.

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The Judge passing sentence may order the execution to be in public, if he sees proper, and may in either case take such steps as he thinks best to secure the execution of the sentence and to determine when death supervenes.

Judges to
report the
defects of
the Code.

§ 4569. It shall be the duty of the Judges of the Superior Courts to make a special report annually to the Governor of this State previous to the meeting of the General Assembly, and by him to be submitted to the Legislature of all such defects, omissions, or imperfections in this Code as experience on their several Circuits may suggest.

Crimes to
be punished
under co-ex-
isting laws.

§ 4570. All crimes and offenses committed shall be prosecuted and punished under the laws in force at the time of the commission of such crime or offense, notwithstanding the repeal of such laws before such trial takes place.

Limita-
tions of in-
dictments.

§ 4571. Indictments for murder may be found and prosecuted at any time after the death of the person killed. In all other cases (except murder) where the punishment is death or perpetual imprisonment, indictments shall be filed and found in the proper Court within seven years next after the commission of the offense, and at no time thereafter. In all other felonies, the indictments shall be found and filed in the proper Court within four years next after the commission of the offense, and at no time thereafter. And in all other cases where the punishment by law is fine or imprisonment, or fine and imprisonment in the common jail of the County, indictments shall be found and filed in the proper Court within two years after the commission of the offense, and at no time thereafter; *provided, nevertheless*, that if the offender shall abscond from this State, or so conceal himself that he can not be arrested, such time during which such offender has been absent from the State, or concealed, shall not be computed or constitute any part of the said several limitations; *provided, also*, that no limitation shall run so long as the offender or offense is unknown; *provided further*, that if the indictment is found within the time limited, and for any informality shall be quashed or *nol. pros'd*, a new indictment may be found and prosecuted within six months from the time the first is quashed or *nol. pros'd*.

Becoming
insane after
conviction.

§ 4572. If, after any convict shall have been sentenced to the punishment of death, he shall become insane, the Sheriff of the County, with concurrence and assistance of the Inferior Court thereof, shall summon a jury of twelve men to inquire into such

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insanity; and if it be found, by the inquisition of such jury, that such convict is insane, the Sheriff shall suspend the execution of the sentence directing the death of such convict, and make report of the said inquisition and suspension of execution to the presiding Judge of the District, who shall cause the same to be entered on the minutes of the Superior Court of the County where the conviction was had. And at any time thereafter, when it shall appear to the said presiding Judge, either by inquisition or otherwise, that the said convict is of sound mind, the said Judge shall issue a new warrant directing the Sheriff to do execution of the said sentence on the said convict, at such time and place as the said Judge may appoint and direct in the said warrant, which the Sheriff shall be bound to do accordingly. And the said Judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of the said Superior Court.

§ 4573. If a female convict sentenced to the punishment of death shall be found pregnant with child, the Sheriff, with the concurrence and assistance of the Inferior Court, shall select one or more physician or physicians, who shall make inquisition, and if, upon such inquisition, it appear that such female convict is quick with child, the Sheriff shall suspend the execution of the sentence directing the death of such female, and make report of the said inquisition and suspension of execution to the presiding Judge of the District, who shall cause the same to be entered on the minutes of the Superior Court of the County where the conviction was had. And at any time thereafter, when it shall appear to the said presiding Judge that the said female convict is no longer quick with child, he shall issue a new warrant directing the Sheriff to do execution of the said sentence, at such time and place as the said Judge may appoint and direct in the said warrant, which the Sheriff shall be bound to do accordingly. And the said Judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of said Superior Court.

Female convicts pregnant.

§ 4574. Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the presiding Judge of the Superior Court where the conviction was had, on the application of the Attorney or Solicitor General of the District, or other person prosecuting for the State, shall issue a *habeas corpus* to bring such convict before him; or if such convict be at large, said Judge, or any judicial officer of this State, may issue

If execution is not done at appointed time.

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a warrant for his apprehension; and upon the said convict being brought before the said Judge, either by *habeas corpus* or under such warrant, he shall proceed to inquire into the facts and circumstances of the case, and if no legal reason exists against the execution of such sentence, such Judge shall sign and issue a warrant to the Sheriff of the proper County, commanding him to do execution of such sentence at such time and place as shall be appointed therein, which the said Sheriff shall do accordingly. And the Judge shall cause the proceedings in such case to be entered on the minutes of the Superior Court of the County.

§ 4575. Whenever any convict shall be sentenced to the punishment of death, the Court shall specify the time and place of execution in such sentence, which time shall not be less than twenty days nor more than sixty days from the time of the sentence, except in the case of a female convict who is quick with child at the time, in which case the Court may and shall appoint some day that will arrive after she shall have been delivered of such child.

Execution—
within what
time from
sentence.

§ 4576. When an offense shall be committed on the boundary line of two Counties, it shall be considered and adjudged to have been committed in either County, and an indictment for such offense may be found and tried in, and conviction thereon may be had in either of said Counties.

Offenses
on bounda-
ry lines.

§ 4577. When any mortal wound shall be given, or any poison shall be administered, or any other means shall be employed in one County by which a human being shall be killed, who shall die thereof in another County, the indictment shall be found and the offender shall be tried in the County where the act was performed or done from which the death ensued.

Death from
an act done
in another
County.

§ 4578. If such wound be given or poison administered upon soil the jurisdiction over which has been ceded to the United States, within the geographical limits of this State, or within the territory of an adjoining State, and death shall ensue therefrom in any County in this State, the indictment shall be found and the cause tried in the County where the death occurs.

Or on soil
ceded to U.
S.

§ 4579. No lunatic, or person afflicted with insanity, shall be tried, or put upon his trial, for any offense, during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed out, where the plea of insanity at the time of offense is filed, and, on being found true, the prisoner shall be disposed of in like manner.

Lunacy and
insanity.

§ 4580. No person shall be convicted of an assault with intent

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to commit a crime, or of any other attempt to commit any offense, when it shall appear that the crime intended, or the offense attempted, was actually perpetrated by such person at the time of such assault, or in pursuance of such attempt. The attempt never to be indicted.

§ 4581. Upon the trial of an indictment for any offense, the jury may find the accused not guilty of the offense charged in the indictment, but guilty of an attempt to commit such offense, without any special count in said indictment for such attempt; *provided* the evidence before them will warrant such finding. Jury may always find the attempt.

§ 4582. If any person, who has been convicted of an offense and sentenced to confinement and labor in the penitentiary, shall afterwards commit a crime punishable by confinement and labor in the penitentiary, and be thereof lawfully convicted, such convict shall be sentenced to undergo and suffer the longest period of time and labor prescribed for the punishment of such offense of which he stands convicted. Two convictions, longest time.

§ 4583. On the trial of any convict in the penitentiary for the crimes of escape and mutiny, or either of them, any other prisoner or convict, not included in the same indictment, shall be a competent witness, and the infamy of his character and of the crime of which he has been convicted shall be exceptions to his credit only. On trials for escapes and mutiny.

§ 4584. When any person stands indicted for an offense which, upon conviction, may subject him to the punishment of death or imprisonment in the penitentiary, it shall be the duty of the Court to have impaneled forty-eight jurors from which to select a jury for the trial of such offender, and to continue to furnish [panels, consisting of such number of jurors, as the Court, in its discretion, may think proper, until a jury is obtained.] (a) Impanelling jury.

§ 4585. Said panel shall contain the Petit Jurors already sworn and in attendance, and talesmen summoned by order of the Court, indiscriminately and impartially from the citizens of the County. Talesmen.

§ 4586. The Clerk shall make out three lists of each panel, and furnish one to the prosecuting counsel, and one to the counsel for the defense. The Clerk shall then call over the panel, and it shall be immediately put upon the accused. Putting panel on prisoner.

§ 4587. The accused may, in writing, challenge the array for any cause going to show that it was not fairly or properly impan- Challenge to the array.

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neled, or ought not to be put upon him, the sufficiency of which challenge the Court shall determine at once. If sustained, a new panel shall be ordered; if not sustained, the selection of jurors shall proceed.

§ 4588. On calling each juror, he shall be presented to the accused in such a manner that he can distinctly see him, and it shall be then lawful for the State, or the accused, to make either of the following objections—viz:

Challenges
for cause.

1. That he is not a free white citizen, resident in the County.
2. That he is over sixty or under twenty years of age.
3. That he is an idiot, or lunatic, or intoxicated.
4. That he is so near of kindred to the prosecutor, or the accused, or the deceased, as to disqualify him by law from serving on the jury.

Time when
to be made.

It shall be the duty of the Court to hear immediately such evidence as may be submitted (the juror being a competent witness) in relation to the truth of these objections; and if he shall be satisfied of the truth of either, the juror shall be set aside for cause, if either one of these objections be true in fact; but if the fact is unknown to either party, or the counsel of such party, at the time the juror is under investigation, and is subsequently discovered, such objection may be made, and the proof heard at any time before the prosecuting counsel submits to the jury any of his evidence in the case; but if known to the party or his counsel, the objection must be made before the juror is sworn in the case.

Questions on
voir dire.

§ 4589. On all trials for crimes or offenses, on the criminal side of the Court, where the punishment is death or imprisonment and labor in the penitentiary, any juror may be put upon his *voir dire*, and the following questions shall be propounded to him—viz: “Have you, from having seen the crime committed, or having heard any of the testimony delivered on oath, formed and expressed any opinion in regard to the guilt or innocence of the prisoner at the bar?” If the juror shall answer in the negative, then the following question shall be propounded to him: “Have you any prejudice or bias resting on your mind either for or against the prisoner at the bar?” And if the juror shall answer these questions in the negative, the following question shall be propounded: “Is your mind perfectly impartial between the State and the accused?” And if he shall answer this question in the affirmative, he shall be adjudged and held a competent juror, in all

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cases where the offense does not involve the life of the accused; but when it does involve the life of the accused, the following additional question shall be put to him: "Are you conscientiously opposed to capital punishment?" If he shall answer this question in the negative, he shall be held a competent juror; *provided*, Proviso. *nevertheless*, that either the State or the defendant shall have the right to introduce evidence before the Judge to show that the answers, or any of them, of the jurors are untrue; and it shall be the duty of the Judge to determine upon the truth of such answers as may be thus questioned before the Court.

§ 4590. If a juror shall answer any of these questions so as to render him incompetent, or he shall be so found by the Judge, he shall be set aside for cause. Setting aside for cause.

§ 4591. If found competent and not challenged peremptorily by the State, he shall be put upon the prisoner, and unless challenged peremptorily by him, shall be sworn to try the cause. Swearing in chief.

§ 4592. When a juror has been found competent as aforesaid, no other or further investigation before triers, or otherwise, shall be had, unless upon newly discovered evidence to disprove his answer, or to show him incompetent as aforesaid, which may be heard by the Judge at any time before any of the evidence on the main issue is submitted; and if the juror is proved incompetent, the Judge may order him withdrawn from the jury and cause another selected in the same manner as is above pointed out. No investigation before triers.

§ 4593. [In all criminal cases, when a jury can not be obtained in the County where the crime was committed, it shall be lawful for said cases to be transferred to any County that may be agreed upon by the Solicitor General and the defendants or their counsel, and be tried in the County agreed upon; and in the event the Solicitor General and the defendants or their counsel fail or refuse to agree upon any County in which to try said cases then pending, the Judge is hereby authorized to select the County in which the same shall be tried, and have the cases transferred accordingly.] (a) Criminal cases may be transferred—when.

§ 4594. Any person sentenced to confinement and labor in the penitentiary, is and shall be thereby rendered incapable of holding or exercising any public or private office, trust, power, or authority, and any such held by him shall become and be vacant, by virtue of such sentence. Penitentiary imprisonment is disqualification.

§ 4595. When two or more defendants shall be jointly indicted

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Joint defend-
ants may
be tried sep-
arately.

for any offense, any one defendant may be tried separately, and if the offense be such as requires the joint action and concurrence of two or more persons, the acquittal or conviction of one shall not operate as an acquittal or conviction of any of the others not tried, but they shall be subject to be tried in the same manner.

Continu-
ance by one.

§ 4596. The continuance of a case by one of several defendants indicted jointly shall in no case operate as a continuance as to the other defendants objecting thereto.

Opprobrious
words may
be proved
in defense.

§ 4597. On the trial of any indictment for an assault, or an assault and battery, the defendant may give in evidence to the jury, any opprobrious words, or abusive language used by the prosecutor or person assaulted or beaten; and such words and language may or may not amount to a justification, according to the nature and extent of the battery, all of which shall be determined by the jury.

Oath of in-
quest of in-
sanity.

§ 4598. On the trial of the question of insanity, arising after the person shall have been condemned to die, provided for by Section 4572 of this Code, the following oath shall be administered to the jury—to wit: "You, and each of you, do solemnly swear (or affirm) that you will well and truly try this issue of insanity between the State and A. B., now condemned to die, and a true verdict give according to evidence. So help you God."

In capital
or peniten-
tiary cases.

§ 4599. On the trial of all cases where the party, if found guilty, would be subject to confinement in the penitentiary, or any greater punishment, it shall be the duty of the presiding Judge to have the testimony given in said case taken down; and in the event of the jury returning a verdict of guilty, the testimony shall be entered on the minutes of the Court, or a book to be kept for that purpose.

Form of
sentence.

§ 4600. In sentencing a person convicted of an offense subjecting him to penitentiary imprisonment, the Judge shall frame such sentence so as to authorize his confinement and labor in the penitentiary of this State, or at such other place or places as the Governor of the State may direct.

Commuta-
tion for good
behavior.

§ 4601. The Superintendent or principal keeper of the penitentiary shall keep a book in which shall be entered the names of the convicts sentenced for a term of two or more years; opposite to each name shall be placed by the book-keeper a mark of approbation or disapprobation, according to the conduct of each; and should it appear from this book that the conduct of any one is unexceptionable, then such convict's time of confinement (except

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confinement for life) shall be shortened two days in each and every month for the time they shall have so served.

§ 4602. The costs of any prosecution shall not be demanded of any defendant (except the fees of his own witnesses) until after conviction or escape; in either of which cases judgment may be entered up for all costs accruing in the committing or Superior Courts, and by any officer pending the prosecution—on which judgment the Clerk shall issue execution against all the property of the defendant—and such judgment shall have a lien upon such property from the date of the arrest of the defendant. In cases of conviction, the Court may nevertheless direct the defendant to be imprisoned until all costs are paid.

Collection
of costs.

Lien of
judgment.

§ 4603. If any prisoner in the common jail, after the time of his imprisonment expires, or otherwise, is detained merely until costs, [or until fine and costs are paid, and the Justices of the Inferior Court are satisfied that he is unable to pay the costs and fine, or either of them, said Justices (the whole Court therein concurring) may discharge such prisoner from further confinement.] (a)

Discharge
of insolvents
by Inferior
Court.

Bail taken
only twice.

§ 4604. No person shall give bail more than twice after indictment or presentment found for the same offense.

§ 4605. Upon the failure to appear of any principal in any bond or recognizance given by a person charged with a penal offense, or by a prosecutor to prosecute, or by a witness to appear and testify, the prosecuting attorney shall proceed to forfeit such bond or recognizance in the manner heretofore practiced in this State.

Proceedings
to forfeit re-
cognizances.

§ 4606. The Clerk shall issue a *scire facias* on all forfeited bonds, recognizances, or other obligations, against the principal and his sureties, which shall be served by the Sheriff or his deputy, or by publication, as provided in Sections 3364 and 3366, returnable to the next term of such Court. And if, at such term, no sufficient cause be shown to the contrary, judgment, on motion, shall be entered against such principal and sureties, or such of them as have been served.

Judgment
against bail.

§ 4607. Bail can surrender their principal to the Sheriff in vacation as well as in open Court.

Surrender
of bail.

§ 4608. [All crimes designated in the Penal Code of this State, punishable by fine and imprisonment, or either, shall be punishable in the manner hereinafter set forth—that is to say, the punish-

Punishment
for minor of-
fenses.

Division 13.—Of Indictments, Arraignments, etc.

ment for any of the aforesaid crimes hereafter committed, shall be a fine not to exceed one thousand dollars, imprisonment not to exceed six months, whipping not to exceed thirty-nine lashes, to work in a chain-gang on the public works, not to exceed twelve months, and any one or more of these punishments may be ordered, in the discretion of the Judge.] (a)

§ 4609. All offenses against the person or property of a citizen, Settlement of minor offenses. not punishable by fine and imprisonment, or a more severe penalty, may be settled by the prosecutor and offender at any time before verdict, the costs up to the time of settlement being first paid.

§ 4610. All other offenses must be settled by the prosecutor, Of all others. with the consent of the Court, entered by order on its minutes, and not otherwise.

§ 4611. Any officer of Court knowingly demanding as costs Excessive costs misdemeanor. from a defendant, fees to which he is not entitled, [and any Attorney or Solicitor General who shall demand or receive any fee, or costs, on any criminal case which has not been tried by a Petit Jury, or otherwise finally disposed of, shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in Solicitor not to receive costs—when Section 4245 of this Code.] (b)

§ 4612. Two returns of “No bill” by Grand Juries, on the Two returns of “No bill” a bar. same charge or accusation, shall be a bar to any future prosecution for the same offense, either under the same or another name, unless such returns have been procured by the fraudulent conduct of the person charged, on proof of which, or of newly discovered evidence, the Judge may allow a third bill to be presented, found and prosecuted.

§ 4613. When costs are not recovered from the defendant, the Insolvent costs. same shall be paid to the respective officers out of money received for fines, upon orders regularly presented and allowed and entered Order for distribution. on the minutes of the Court. Such orders (except those of the prosecuting attorneys), shall be paid in the order of their date, and all moneys arising from fines shall be distributed under an order of the Court, to be entered on the minutes at each term. Upon application of the Ordinary, the Grand Jury may, at any Power of Grand Jury. term, require an exhibit from the Solicitor General and Clerk, showing the disposition of all money arising from fines, and the present state of their accounts. The cases on the criminal docket

Division 14.—Of Contempts of Court, and Attempts to Commit Crime.

shall be called in the order in which they stand on the docket, unless the defendant be in jail, [or otherwise in the sound discretion of the Court,] (a) and the State shall be required in every case to announce ready or not ready for trial, [except in those cases where the defendant is entitled by law to demand a trial,] (b) before the defendant shall be called on to make such announcement; and in all cases in which the defendant can not according to law demand a trial, a continuance shall not be granted to the State, except upon a reasonable showing therefor.

The State shall announce ready or not ready.

FOURTEENTH DIVISION.

OF CONTEMPTS OF COURT, AND ATTEMPTS TO COMMIT CRIMES.

SECTION.

4614. Contempts of Court.

SECTION.

4615. Penalty for attempts.

§ 4614. The power of the several Courts of Law and Equity in this State, to issue attachments and inflict summary punishments for contempts of Court, shall not extend to any cases except the misbehavior of any person or persons in the presence of the said Courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said Courts in their official transactions, and the disobedience or resistance by any officer of said Courts, party, juror, witness, or other person or persons, to any lawful writ, process, order, rule, decree, or command, of the said Courts.

Power
of
Courts
in punishing
contempts.

34 4a/166

§ 4615. If any person shall attempt to commit an offense prohibited by law, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted from executing the same, such person so offending shall be indicted for a misdemeanor, and, on conviction thereof, shall, in cases where no provision is otherwise made in this Code, or by law, for the punishment of such attempt, be punished as follows:

Attempts
to
commit
crimes—
how punished.

26 4a/492

First. If the offense attempted to be committed be such as is punishable by law with death, the person convicted of such attempt shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor more than seven years.

If the intended offense would have been capital.

(a) Acts of 1862-3, p. 140. (b) Acts of 1862-3, p. 138.

Division 14.—Of Contempts of Court, and Attempts to Commit Crime.

Second. If the offense attempted to be committed be punishable by law by imprisonment and labor in the penitentiary for a time not less than four years, the person convicted of such attempt shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than four years.

Third. If the offense attempted to be committed be such as is punishable by law by imprisonment and labor in the penitentiary for a time not less than two years, the person convicted of such attempt shall be imprisoned in the penitentiary at labor for the term of one year.

Fourth. If the offense attempted to be committed be punishable by law by imprisonment and labor in the penitentiary for a time not exceeding one year, the person convicted of such attempt shall be punished [as prescribed in Section 4245 of this Code.] (a)

Fifth. If the offense attempted to be committed be punishable by law by fine not exceeding five hundred dollars, or imprisonment in the common jail, or both, the person convicted of such attempt shall be punished [as prescribed in Section 4245 of this Code.] (a)

FIFTEENTH DIVISION.

PROCEEDINGS IN PRELIMINARY COURTS.

ARTICLE 1.—*Proceedings Prior to Arrest.*

ARTICLE 2.—*Of Arrest and its Consequences.*

ARTICLE 3.—*Of Courts of Inquiry, Commitment and Bail.*

ARTICLE 4.—*Of Warrants for Good Behavior, etc.*

ARTICLE 5.—*Of Search Warrants.*

ARTICLE 6.—*Of Proceedings in Cases of Bastardy.*

ARTICLE I.

PROCEEDINGS PRIOR TO ARREST.

SECTION.

- 4616. Who may issue warrants.
- 4617. Contents of affidavit and warrant.
- 4618. Form of affidavit.
- 4619. Form of warrant.
- 4620. Special warrant prohibited.

SECTION.

- 4621. Of selection of Judge to try cause.
- 4622. Officer may require bond.
- 4623. Warrants may issue in any County.
- 4624. Officer may follow accused.

Article 1.—Proceedings Prior to Arrest.

§ 4616. Any Judge of a Superior or City Court, any Judge of the County Court, or Justice of the Peace, or any corporation officer clothed by law with the powers of a Justice of the Peace, may issue his warrant for the arrest of any offender against the penal laws of this State, based either on his own knowledge or the information of others given to him under oath.

Who may issue warrants

§ 4617. [Any affidavit made, or warrant issued for the arrest of any offender against the penal laws of this State, shall state as nearly as practicable the following facts—to wit: The offense, the County in which the same was committed, and the time when committed; and when the offense charged is larceny, the ownership of the property alleged to have been stolen, or the person from whose possession it was taken, shall, as far as practicable, be stated in the affidavit and warrant.] (a)

What affidavit and warrant must state.

§ 4618. [An affidavit substantially complying with the following form shall in all cases be deemed sufficient:

Form of affidavit.

GEORGIA, }
 ——— COUNTY. }

Personally came A. B., who, on oath, saith that, to the best of his knowledge and belief, C. D. did, on the ——— day of ———, in the year ———, in the County aforesaid, commit the offense of ———; and this deponent makes this affidavit that a warrant may issue for his arrest.

A. B.

Sworn to and subscribed before me, this the ——— day of ———, 18—, J. P.] (a)

§ 4619. [The following form may be used for a warrant, a substantial compliance with which shall be deemed sufficient:

Form of warrant.

GEORGIA, } To any Sheriff, Deputy Sheriff, Coroner, Constable, or
 ——— COUNTY. } Marshal of said State—Greeting:

A. B. makes oath before me that on the ——— day of ———, in the year ———, in the County aforesaid, C. D. did commit the offense of ———. You are therefore commanded to arrest the body of the said C. D., and bring him before me, or some other judicial officer of this State, to be dealt with as the law directs. You will also levy on a sufficiency of the property of said C. D. to pay the costs in the event of his final conviction. Herein fail not.

———, J. P.] (a)

§ 4620. No judicial officer, except a Judge of the Superior

Article 1.—Proceedings Prior to Arrest.

Special
warrant.

Court, shall issue a special warrant returnable only before himself; nor shall any Judge issue such warrant out of his own Judicial Circuit. In such cases the warrant, though special, shall be treated as a general warrant.

Of selec-
tion of Judge
to try the
cause.

§ 4621. The arresting officer shall carry the prisoner before the most convenient and accessible judicial officer authorized to hear the cause, unless the prisoner shall desire otherwise; in which case, if there be no suspicion of improper motive, the arresting officer shall carry him before some other judicial officer. But in no case has a prisoner the right to select the Justice before whom he shall be tried.

Officer may
require bond
to prosecute.

§ 4622. The officer issuing a warrant upon any sufficient grounds of suspicion, may require the applicant first to file a bond with sufficient sureties to prosecute the suit in the event of a committal.

Backing
warrants in
a n o t h e r
County.

§ 4623. A warrant may be issued in any County, though the crime was committed in another; and a warrant once issued may be executed in any County, [without being backed or indorsed by any judicial officer upon its being carried from one County to another.] (a)

* Sheriff, etc.
may make
arrest in any
County.

§ 4624. [It shall be lawful for any Sheriff, Constable, or other arresting officer of this State, to arrest any person charged with crime under a warrant issued by any judicial officer of the State, in any County of the State, without regard to the residence of said arresting officer; and it is hereby made the duty of such arresting officer to carry said accused, with the warrant under which he was arrested, to the County in which the offense is alleged to have been committed, for examination before any judicial officer of said County.] (a)

Accused to
be carried
to County
where of-
fense was
committed.

ARTICLE II.

OF ARREST AND ITS CONSEQUENCES.

SECTION.

- 4625. Arrest—posse to assist.
- 4626. Arrest—without warrant.
- 4627. Arrest—by private person.
- 4628. Duty of person arresting.

SECTION.

- 4629. Of officer arresting.
- 4630. Bench warrant.
- 4631. What constitutes an arrest.
- 4632. Breaking open doors.

§ 4625. Every officer is bound to execute the penal warrants

(a) Acts of 1865-6, pp. 38-9.

Article 2.—Of Arrest and its Consequences.

placed in his hands, and to that end he may summon to his assistance, either in writing or verbally, any of the citizens of the neighborhood or County. As the posse of such officer, their acts shall be subject to the same protection and consequences as official acts.

Arrest and posse.

§ 4626. An arrest may be made for a crime by an officer, either under a warrant or without a warrant, if the offense is committed in his presence, or the offender is endeavoring to escape, or for other cause there is likely to be a failure of justice for want of an officer to issue a warrant.

Arrest without warrant.

§ 4627. A private person may arrest an offender, if the offense is committed in his presence or within his immediate knowledge; and if the offense is a felony, and the offender is escaping, or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

By private person.

§ 4628. In every case of an arrest without warrant, the person arresting shall, without delay, convey the offender before the most convenient officer authorized to receive an affidavit and issue a warrant. And no such imprisonment shall be legal beyond a reasonable time allowed for this purpose.

Duty of person arresting.

§ 4629. Every officer arresting under a warrant shall exercise reasonable diligence in bringing the person arrested before the person authorized to examine, commit, or receive bail.

Of officer arresting.

§ 4630. A bench warrant is one issued by a Judge for the arrest of one accused of a crime by a Grand Jury. Every officer is bound to execute it within his bailiwick, and every person so arrested must be committed to jail until bail is tendered; in which case, any judicial officer, or the Sheriff of the County where the accusation was found, may receive the bail, and, to this end, may fix the amount of the bond and approve the sureties.

Bench warrant.

§ 4631. An actual touching with the hand is not essential to constitute a valid arrest. If the defendant voluntarily submits to be considered under arrest, or yields on condition of being allowed his freedom of locomotion under the discretion of the officer, the arrest is complete.

What constitutes an arrest.

§ 4632. In order to arrest under a warrant charging a crime, the officer may break open the door of any house where the offender is concealed.

Breaking open doors.

Article 3.—Courts of Inquiry.

ARTICLE III.

OF COURTS OF INQUIRY.

SECTION.

- 4633. Who may hold.
- 4634. Other associates.
- 4635. Time granted parties.
- 4636. Evidence.
- 4637. Abstract of evidence.
- 4638. Witnesses may be recognized.
- 4639. Binding over witnesses.
- 4640. Rule of decision.
- 4641. Commitment.

SECTION.

- 4642. Prisoner sent to adjoining County.
- 4643. Payment of jail fees.
- 4644. Bail.
- 4645. Waiving trial.
- 4646. May be committed for diff'nt offense
- 4647. Disposition of papers.
- 4648. Bail surrendering principal.
- 4649. Bail allowed—how often.
- 4650. Informality no ground of discharge.

§ 4633. Any Judge of the Superior or County Court, or Justice of the Peace, or city or town officer, who may be *ex officio* Justice of the Peace, may hold a Court of Inquiry to examine into any accusation against any person legally arrested and brought before him. The time and place of such inquiry shall be determined by him.

§ 4634. The officer before whom the accused is brought may associate with him, in the investigation, one or more Justices; in which event, a majority shall decide all questions. If there are only two presiding, the original Justice shall determine all questions where the Court is not agreed.

§ 4635. A reasonable time shall be given to the defendant or prosecutor for the preparation of his case, and in no event shall the defendant be forced to trial without the aid of counsel, if there be a reasonable probability of his securing counsel without too great delay. [And where the cause is postponed to a future day at the instance of either party, or by the Court, it shall not be necessary to commit the defendant to jail pending the hearing; but he shall have the right to give bail for appearance at the hearing before said Court of Inquiry; *provided* the offense is bailable under the authority of said Court.] (a).

§ 4636. The Court shall hear all legal evidence submitted by either party, and shall always permit the defendant to make his own statement of the transaction (not under oath), if he desires to do so. The weight to be given to such statement shall be entirely in the discretion and sound judgment of the Court. Whenever such statement is made, it shall be the duty of the Court to

Article 3.—Courts of Inquiry.

reduce it to writing, and return it with the other papers to the proper Court, in the event of a commitment.

§ 4637. If the charge be of a felony, the Court shall cause an abstract of all the evidence to be made and returned as above. Mem. of evidence.

§ 4638. In the event of a commitment, the Court, in its discretion, may require the witnesses in behalf of the State or others to give suitable bonds for their appearance at Court, with or without sureties, as the circumstances seem to demand. Binding over witnesses.

§ 4639. A Court of Inquiry shall have power to compel the attendance of all witnesses resident within the County, after notice of twenty-four hours, and to this end may order their arrest. Attendance of witnesses.

§ 4640. The duty of the Court of Inquiry is simply to determine whether there is sufficient reason to suspect the guilt of the accused, to require him to appear and answer before the Court competent to try him, and, whenever such probable cause exists, it is the duty of the Court to commit. Rule of decision.

§ 4641. The following form, or one in substance the same, shall be deemed a sufficient commitment: Commitment.

GEORGIA, }
 _____ COUNTY. }

A. B. having been arrested on a warrant for the offense of _____ and brought before me, after hearing evidence, it is ordered that he be committed for trial for the offense of _____. And the Jailor of said County (or any other County, if necessary) is required to receive and safely keep him until discharged by due process of law. Witness my hand and seal, this _____ day of _____, 18—.

_____, J. P. [SEAL.]

§ 4642. [When there is no secure jail in any County in this State, any person committing an offense in said County, shall be sent to jail in the nearest County having a secure jail; the County where the offense is committed shall be primarily liable for jail fees and costs, and the County so primarily liable shall pay said jail fees and costs monthly in advance, and for the purpose of raising funds to pay the same, the Inferior Court may, levy and collect an additional tax.] (a) County sending prisoner to jail in adjoining County liable for fees.

§ 4643. [No Jailor shall be bound to receive a prisoner from another County, until the jail fees and costs are provided for as set forth in the preceding Section.] (a) Jailor not bound to receive prisoner—when.

*2nd of 1811 a to set when party
 is discharged 28 9/11/12*

Article 3.—Courts of Inquiry.

* Bail. § 4644. If bail is tendered and accepted, no regular commitment need be entered, but a simple memorandum of the fact of bail being taken. A reasonable opportunity shall be allowed the accused to give bail, and even after commitment and imprisonment, the committing Court may order the prisoner brought before him or them, to receive bail.

Waiving trial. § 4645. If the party waives a hearing and tenders bail, a memorandum of these facts shall be entered on the warrant; and this may be done by the party charged before arrest, and when done, shall operate as a supersedeas.

Committing for different offense. § 4646. A Court of Inquiry may commit for a different offense than that stated in the warrant, if the evidence requires it.

Disposition of papers. § 4647. The commitment shall be delivered to the officer in whose charge the prisoner is placed, to be delivered with the prisoner to the Jailor, and a memorandum of the fact entered on the warrant. The warrant and all the other papers shall be forwarded to the Clerk of the Superior Court, or other Court having jurisdiction of the crime, to be delivered to the Solicitor or Attorney General.

Bail surrendering principal. § 4648. Bail may surrender their principal in vacation to the Sheriff, or in open Court, in discharge of themselves from liability and such privilege shall continue to the day of the term, without liability for costs for a forfeiture of the bond. After forfeiture, and before final judgment, the bail may, at any time, surrender their principal, upon payment of all costs accruing up to that time. The death of the principal at any time before final judgment, shall be equivalent to a surrender.

Bail but once. § 4649. No person shall give bail but once before indictment found, nor more than twice afterwards, before trial. Capital offenses areailable only before a Judge of the Superior or County Court, and is, in every case, a matter of sound discretion. All other cases areailable by the committing Court. Excessive bail shall never be demanded.

Informality no ground of discharge. § 4650. No prisoner shall be discharged on a writ of *habeas corpus* because of informality in the commitment, or of the proceedings prior thereto, provided the foregoing provisions of this Division have been substantially complied with.

Article 4.—Warrants for Good Behavior, and to Keep the Peace.

ARTICLE IV.

OF WARRANTS FOR GOOD BEHAVIOR, AND TO KEEP THE PEACE.

SECTION.

4651. Bond for good behavior.
 4652. Suit for breach.
 4653. Extended from term to term.
 4654. Bond to keep the peace.

SECTION.

4655. Breach of the bond.
 4656. When revoked.
 4657. Extending the bond.
 4658. Wife may require it.

§ 4651. Any of the judicial officers before named may, upon the information of others under oath, or on his own motion, issue his warrant against any person in the County, whose conduct is such as to justify the belief that the safety of any one or more of the citizens of the County, or the peace or the property of the same is in danger of being injured or disturbed thereby; and upon the return of such warrant, the Court, in its discretion, may require from such person a bond with sureties for his good behavior, until the next term of the Superior Court of the County.

Bond for
good behav-
ior.

§ 4652. For a violation of such bond, suit may be brought at the instance of any citizen of the County, and one-half the recovery shall be paid to the informer, and the other half be added to the Educational Fund of the County.

Suit for
breach.

§ 4653. Such bond for good behavior may be extended from term to term, by the Superior Court in its discretion; the sureties, like other bail, having the privilege of surrendering their principal. If not extended, it expires with the session of such Court.

Extended
from term to
term.

§ 4654. Upon the information of any person under oath, that he is in fear of bodily harm to himself or his family, from another, or of violent injury to his property, any of the judicial officers before named, may issue his warrant against such other person, requiring his arrest; and if, upon the return thereof, the Court is satisfied, upon hearing the evidence of both parties, that probable cause for such fear exists, he may require the accused to give bond, with good security, to keep the peace, as against the person, family, and property of the affiant; and, on failure to give the bond, shall commit him to jail.

Bond to
keep the
peace.

§ 4655. Actual violence, or a menace of violence, or any other act intended and calculated to excite alarm, or to provoke a breach of the peace, shall be a violation of such bond; and for every such act, the party at whose instance it shall be required shall have a right of action.

Breach of
the bond.

Article 5.—Search Warrants.

§ 4656. If the party requiring the bond, by his own conduct,
When provoked. provokes a violation by the other, no recovery shall be had.

§ 4657. The Superior Court may, at any time, discharge the
Extending the bond. bond, unless there be a motion to extend it, accompanied by evidence to satisfy the Court of the necessity of such extension.

§ 4658. A wife may require a bond to keep the peace, or for
Wife may require it. good behavior, against her husband.*

ARTICLE V.

OF SEARCH WARRANTS.

SECTION.

4659. When issued.

4660. How executed.

4661. Goods, if found.

SECTION.

4662. Forcible taking of goods.

4663. Binding over offender.

§ 4659. A warrant to search the person or property of another
When issued must issue only upon probable cause, supported by oath, and particularly describing the place to be searched, and the person or thing to be seized.

§ 4660. The officer executing such a warrant may break the
How executed. door of the house or room specified in the warrant. The warrant is his justification. If it was taken without probable cause, the breaking and search is a trespass on the part of the applicant therefor.

§ 4661. If the goods are found, the officer shall seize and bring
Goods if found. them before the Court, who may hear evidence as to ownership and possession, and grant possession to the owner from whom the same have been feloniously taken.

§ 4662. The forcible taking of goods, if not done with criminal
Forcible taking of goods. intent, is not probable cause for a search warrant.

§ 4663. Upon the hearing, the Court may require the person in
Binding over offender. whose possession the goods are found to give bond for his appearance, to answer either charge for larceny, or receiving stolen goods, as the facts may be.

* See Section 3798.

Article 6.—Proceedings in Cases of Bastardy.

ARTICLE VI.

OF PROCEEDINGS IN CASES OF BASTARDY.

SECTION.

4664. Proceedings against parents.

4665. Commitment of mother.

SECTION.

4666. Suit on bond.

4667. Deposit of bond.

§ 4664. Any Justice of the Peace, in any County within this State, who of his own knowledge, or on information to him on oath, made of any free white woman having a bastard child, or being pregnant with one, which it is probable will become chargeable to the County, he may thereupon cause a warrant, under his hand and seal, directed to the Sheriff or any Constable of said County where the case may arise, and oblige the offender to be brought before him, to give security to the Inferior Court of the County, in the sum of seven hundred and fifty dollars, for the support and education of such child till the age of fourteen years, or to discover on oath the father of such bastard child; which being done, the said Justice shall issue his warrant, in like manner, to bring before him the person sworn to be the father of such child so born, or to be born, who, on refusing to give security for the maintenance and education of such child until it arrives at the age of fourteen years, and also the expense of lying-in with such child or children, boarding, nursing, and maintenance, while the mother of such child is confined by reason thereof; that then it may and shall be lawful for the said Justice to bind over such delinquent in a sufficient recognizance to be and appear before the next Superior or County Court which may be held in said County; and it shall be the duty of the Attorney or Solicitor General to prefer a bill of indictment, to be laid before the Grand Jury, to answer to such complaint as may be then and there alleged against him touching the premises.

§ 4665. In case the woman, who shall have been delivered, or is likely to be delivered, when brought before a Justice, refuses to discover on oath the father of such child so born, or to be born, or give such security to appear before the next Superior or County Court to be held in and for the said County, and to give such security as may be then and there required of her by the said Court, for the maintenance and education, as aforesaid, of the said child, that then it shall be lawful for the Justice to commit her, in man-

Proceedings
against the
mother.Against the
father.Women to
be commit-
ted who fail
to comply
with this act.

Article 6.—Proceedings in Cases of Bastardy.

But they
may offer ex-
culpatory
evidence.

ner and form aforesaid, as pointed out by this act; and in case of her refusing to make known to the said Court the father of such child, or give security as aforesaid, that then it may and shall be lawful for the said Court to imprison her not exceeding three months; *provided, nevertheless*, that nothing herein contained shall be so construed as to bar either party, when charged as aforesaid, from offering [an exculpatory affidavit or testimony—either or both] (a) to the Magistrate in the first instance of the charge exhibited, who may exercise his discretionary power, after due inquiry being had, either to discharge or recognize both or either of the parties charged as aforesaid. in conformity to the intent and meaning of this act, any thing to the contrary notwithstanding.

Bonds for
the mainten-
ance of bas-
tard child-
ren.

§ 4666. It shall be the duty of the Inferior Courts in the several Counties of this State, when any child has or shall become chargeable to the County where a bond is taken, as above recited, for the maintenance of a bastard child, to institute an action on all bonds so taken; and it shall be lawful for them to recover the full amount of said bond or bonds, which judgment or judgments shall remain open, and be subject to be appropriated by the Courts aforesaid, from time to time, as the situation and exigencies of the said bastard child may require.

How and
where bonds
are to be re-
turned.

§ 4667. It shall be the duty of the Justice or Justices of the Peace, before whom the bond shall be taken, to return such bond to the Clerk of the Inferior Court of the County in which such female shall reside, within thirty days after the same is taken.

(a) Acts of 1866, p.152.

1 Am L Rev. 709 - Bastardy.

Chapter 1.—The Penitentiary.

TITLE II.

OF THE PENITENTIARY.

CHAPTER I.

THE PENITENTIARY.

SECTION.

- 4668. Officers appointed by Governor.
- 4669. Officers appointed by Prin'l Keeper.
- 4670. Salaries.
- 4671. Prisoners' clothes.
- 4672. Description of prisoners.
- 4673. Search of convicts.
- 4674. Law to be read to convicts.
- 4675. Clothing of convicts.
- 4676. Clothing on discharge.
- 4677. Labor of convicts.
- 4678. Hours of labor.
- 4679. Garden cultivated.
- 4680. Cleanliness observed.
- 4681. Hospital.
- 4682. Punishment by officers.
- 4683. Letters to be examined.
- 4684. Visitors—permission to.
- 4685. Spirituous liquors.
- 4686. Lights.
- 4687. Cells.
- 4688. Inspector's duty.
- 4689. United States convicts.
- 4690. Bosses.
- 4691. Duty of Principal Keeper.

SECTION.

- 4692. Morals.
- 4693. By-Laws.
- 4694. Accounts of the State.
- 4695. Conveyance of convicts.
- 4696. General supervision of P. Keeper.
- 4697. Confinement on Sabbath.
- 4698. Book-keeper—duties.
- 4699. Drafts and salaries.
- 4700. Contingencies.
- 4701. Suits—by whom brought.
- 4702. Assistant Keeper.
- 4703. Bonds.
- 4704. Oath.
- 4705. Marked price of goods.
- 4706. Successors.
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- 4708. Loaning materials, etc.
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- 4710. Amount of materials.
- 4711. Physician.
- 4712. Chaplain.
- 4713. Bible, etc.
- 4714. Costs on escapes.
- 4715. Legislative Committee.

§ 4668. The officers for the management of the Penitentiary shall be one Inspector, one Principal Keeper, a Book-keeper, a Physician, and a Chaplain, all of whom shall be appointed for one year by the Governor, who may remove at his pleasure and fill the vacancies.

Officers appointed by the Governor.

§ 4669. There shall be one Assistant Keeper, and as many overseers, not exceeding four, as the Principal Keeper may deem necessary, all of whom shall be appointed by the Principal Keeper for one year, but removable at his pleasure, and the vacancies filled by him.

Officers appointed by the Principal Keeper.

§ 4670. For the salaries to be paid to the several officers of the Penitentiary, see Section 1636.

Salaries.

§ 4671. The Principal Keeper shall cause the clothes of each prisoner, when received, to be cleansed and carefully kept, to be returned to him on his discharge; or at the request of the prisoner, he may sell them and deposit the proceeds with the Clerk,

Prisoners' clothes.

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to be paid to the prisoner on his discharge, or, in case of his death before that time, to his legal representatives.

§ 4672. The Principal Keeper, on the reception of each convict, shall enter, in a book kept for that purpose, an accurate description of such convict, giving his name, age, height, color of eyes and hair, complexion, place of nativity, time of conviction, County where convicted, nature of crime, and period of confinement.

§ 4673. He shall also cause such convict to be searched and deprived of any article by which an escape might be effected, and also of all moneys in his possession, to be returned on his discharge, or to his legal representatives in case of his death.

§ 4674. He shall also read to such convict such parts of the laws of this State as impose penalties for escape, and the rules relating to the conduct of prisoners.

§ 4675. The following clothing shall be annually furnished to prisoners—viz: One jacket, one vest, and one pair of trowsers of kerseys, two pair of shoes, two pair of coarse yarn socks, four shirts, and two pair of trowsers of cotton cloth, with one jacket of the same; the material of the jackets and trowsers to be parti-colored. An additional suit of clothes shall be given to convicts laboring as blacksmiths; also, to each convict a cheap mattress, and as many blankets as are necessary.

§ 4676. When discharged, each prisoner shall receive a suit of clothes not exceeding ten dollars in value, and money not exceeding the same amount; the Principal Keeper to discriminate in both according to the conduct of the prisoner during his confinement.

§ 4677. Except on Sunday and when confined in their cells, the prisoners shall be kept at hard labor as far as may be consistent with their age, health, and ability, and they shall be so arranged at labor as to be under the constant supervision of the Assistant, or one of the overseers, as far as practicable; and no intercourse between convicts shall be allowed, except such as is necessary for the work on which they are engaged.

§ 4678. The hours of labor shall be regulated by the length of the day, allowing not more than forty minutes for meals.

§ 4679. A garden shall be attached to the penitentiary and worked by the convicts, the vegetables to be for their use.

§ 4680. The walls of the cells and other apartments of the prison buildings shall be washed with lime at least once a year; the floors shall be kept neat and clean, and the building fumigated and purified with chloride of lime as often as the Physician shall deem necessary.

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§ 4681. A hospital shall be provided for the sick, and a convict seriously ill at the expiration of his term, shall have the privilege of remaining until his recovery. Hospital.

§ 4682. For violation of rules or by-laws, the prisoner shall be punished at the discretion of the Principal Keeper, the concurring assent of the Inspector being necessary for the infliction of corporal punishment. Punishment
by officers.

§ 4683. All letters or other things to or from the convicts shall pass through the hands of the Principal Keeper, and may be inspected and withheld by him in his discretion. Letters, etc.

§ 4684. Visitors must have the permission of the Principal Keeper, and must be attended while in the penitentiary by a keeper or guard. A wife of a convict may be allowed to visit him under such rules as the Principal Keeper may adopt. Visitors.

§ 4685. Spirituous liquors shall be allowed to a convict only by prescription of the Physician. Spirituous
liquors.

§ 4686. No light shall be allowed in cells after they are locked for the night. Lights.

§ 4687. Prisoners shall be kept in separate cells, and prisoners of different sexes shall at all times be kept separate and apart. The cells shall be numbered and divided into wards, over each of which shall be an overseer. The overseer shall search the cell and prisoner every night to prevent escape. Cells.

§ 4688. The Inspector shall purchase all materials which shall be needed by the Principal Keeper for the use of the Penitentiary, and when delivered, shall take his receipt for the same. At stated times he shall advertise in two of the gazettes at the capital for sealed proposals to furnish wood, stock, and coal. He shall purchase provisions and stores for the prisoners and guard, when required in writing by the Principal Keeper, and at no other time. With the assistance of the Principal Keeper, he shall price all articles made in the Penitentiary. He shall make an annual return to the Governor on the first day of October of each year, showing all of his acts connected with his office. Inspector's
duty.

§ 4689. The Inspector shall have power to regulate the terms on which convicts sentenced by the Courts of the United States for the Circuit and District of Georgia shall be admitted in the Penitentiary. U. S. con-
victs.

§ 4690. The Inspector may employ suitable persons to give necessary instructions in such branches of work as require such skill and knowledge as no convict possesses. Bosses.

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Principal Keeper's duty. § 4691. The Principal Keeper shall deliver all manufactured articles to the Book-keeper, taking duplicate receipts therefor, specifying the prices assessed by the Inspector. He shall also make an annual return to the Governor on the first day of October, showing the amounts of materials, etc., received, and of manufactured articles delivered to the Book-keeper, and also the amount of materials and unfinished work on hand.

Morals. § 4692. He shall carefully note the moral conduct of the prisoners, and furnish them with such moral and religious books as he thinks proper.

By-laws. § 4693. Together with the Inspector, the Principal Keeper may make all necessary by-laws and regulations for the successful working and government of the institution.

Accounts of the State. § 4694. The order of the Governor shall be sufficient voucher for any article, work, or labor needed by the State, and the Book-keeper shall keep a regular account of the same.

Conveyance to convicts. § 4695. The Principal Keeper shall make all necessary arrangements for the conveyance of convicts to the Penitentiary, and may draw on the Book-keeper for the funds necessary to defray all such expenses.

General supervision of Principal Keeper. § 4696. The Principal Keeper shall have a general superintending power over the institution, and shall be responsible for the conduct of all officers under his command. He may enlist his own guard, not exceeding three officers, with as many men as necessary, and at such wages as may be agreed on, and may dismiss them again at his pleasure.

Confinement on Sabbath. § 4697. The Principal Keeper may exercise his discretion as to the time the convicts shall be confined on the Sabbath day.

Book-keeper's duty. § 4698. The Book-keeper shall sell all manufactured articles at the prices assessed as aforesaid, and collect all debts due to the institution, and shall make a quarterly return to the Governor, showing the exact condition of his department.

Drafts. § 4699. The debts contracted by the Inspector, as aforesaid, shall be paid upon the drafts of the Principal Keeper or the Book-keeper. The salaries of the several officers, overseers, and guard shall be paid quarterly by the Book-keeper, in accordance with the pay-roll made out and certified by the Principal Keeper.

Contingencies. § 4700. The Book-keeper shall also pay incidental and contingent expenses of the institution upon the presentation of the accounts audited and certified by the Principal Keeper.

§ 4701. The Book-keeper is authorized to commence suit in his

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own name, officially, for any debt or cause of action accruing to the Penitentiary. Suits.

§ 4702. The Assistant Keeper and overseers shall alternately remain within the Penitentiary during the night, to superintend the guard in such manner as the Principal Keeper shall direct. During the day they shall remain in their respective departments, superintend the labor of the convicts, and discharge all such duties required of them by the Principal Keeper as shall tend to the safe-keeping of the prisoners, the preservation of the buildings and other property of the institution, and the successful operation of the same. Assistant
Keeper and
Overseer.

§ 4703. The Inspector, Principal and Assistant Keeper, and Book-keeper, before they enter upon the discharge of their respective duties, shall give bond and good security to the Governor and his successors, in such sums as may be designated by him, for the faithful performance of their respective duties. Bonds.

§ 4704. The said officers shall also take and subscribe the following oath: "I, ———, do solemnly swear that I will diligently execute all the duties lawfully required of me, as an officer of the penitentiary, and will carry into execution the laws and regulations for the government of the same, to the best of my knowledge and ability; and I will, on no occasion, ill-treat or abuse any prisoner under my care, beyond the punishment accorded by law, or the rules and regulations of the Penitentiary. So help me God." Oath.

§ 4705. The Principal Keeper and Inspector may at any time reduce the marked price of any article offered for sale, if satisfied from any cause the mark is above its market value, and notify the Book-keeper of such change. Reducing
marked
prices.

§ 4706. The Principal Keeper and Book-keeper shall deliver to their successors all the property of the institution of every kind in their charge, taking receipts therefor. Successors.

§ 4707. The officers of the Penitentiary shall be exempt from militia duty in time of peace, and from jury, patrol, road, and corporation duty, at all times. Exemption
of officers.

§ 4708. No officer of the Penitentiary shall sell or loan any of the tools, materials, or products of the garden. The Principal Keeper may sell old and useless materials, accounting for the same to the Book-keeper. Lending or
selling ma-
terials.

§ 4709. The Governor shall appoint three commissioners annually, who shall take an inventory of the stock of the Penitentiary, with an appraisement of its present value. Annual ap-
praisement.

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Amount of raw materials. § 4710. The Assistant Keeper shall keep a set of books on the system of double entry, in which shall be kept a full and correct account of all purchases made, a proper record of all the raw material consumed in the various workshops, as well as of all the manufactured articles, cash, and job work turned over to the Book-keeper for sale. He shall also take charge of the storehouse containing the materials, and issue the same to the different overseers of the workshops, charging every item used to the appropriate shop.

Physicians. § 4711. The Physician to the Penitentiary, appointed by the Governor, shall visit all the sick of the prisoners and guard at least once every day, and before 10 o'clock, A. M., and oftener if necessary or desired by the Principal Keeper. He shall also, at least once every week, inspect the institution generally in whatever may affect its healthfulness.

Chaplains. § 4712. The Chaplain appointed by the Governor shall preach to the convicts at least once every Sabbath day, and give them such other religious instruction as their condition may require.

Bible, etc. § 4713. The Governor shall cause to be furnished to each convict a Bible and hymn-book, to remain in his cell, and, upon his discharge, he shall be permitted to carry the same away with him.

Costs on escapes. § 4714. The expenses of all trials for escapes from the Penitentiary, or attempts to escape, shall be paid by the State.

Legislative committee. § 4715. A joint committee of both branches of the Legislature shall be appointed at each session, to investigate closely into the affairs of the Penitentiary, and report thereon; and all the officers of the said institution shall furnish said committee all the assistance and information within their power.

TITLE III.

O F C O N V I C T S .

CHAPTER I.

CONVICTS.

SECTION.	SECTION.
4716. Convicts—how disposed of.	4720. Provision for keeping.
4717. How kept and employed.	4721. Superintendent.
4718. Discretion of Governor.	4722. Convicts may be put in jail.
4719. Employment of convicts by Gov'r.	4723. Insurrection by convicts.

Chapter 1.—Convicts.

§ 4716. [In all cases where persons are sentenced by any Judge of this State to labor on the public works, or on the public roads, it shall be the duty of the Judge pronouncing the sentence to cause said convicts to be turned over to the Justices of the Inferior Court of the County where the conviction is had; and it shall be the duty of such Justices to receive said convicts, place them in proper custody, and keep them diligently employed upon such public works in the County, in chain-gangs or otherwise, and under such guards as they, in their judgment, may deem best.] (a)

Convicts to be turned over to Justices of the Inferior Court—when.

How worked and guarded

§ 4717. [The said Justices shall have power, and are required, to provide suitable places for the safe-keeping of such convicts, to make provision for their support by the County, to employ such overseers, or guards, or both, as may be necessary for their safe-keeping, and for their constant and diligent employment upon the public works; and shall also have power to hire out, or bind out, such convicts to contractors on the public works, or to individuals, upon such bonds and restrictions as shall subserve the ends of justice. And for the purposes specified in this Section, any two or more Counties, by said Justices, may combine, keep, and work together, such convicts, on such terms, and upon such public works anywhere in the State, as they may agree upon.] (b)

Provision for safe-keeping, etc.

May be bound out.

§ 4718. [When convicts can not be kept and employed as provided in the preceding Section, the said Justices may turn them over to the Governor of the State, to be employed by him upon such public works in the State as he may deem best. And upon notice being given to the Governor by such Justices, of their desire to turn over such convicts, he may, if he deems it advisable, refuse to receive them, but should he deem it advisable to receive them, he shall immediately send a guard for such convicts.] (b)

Employed by Governor—when.

§ 4719. [All convicts sentenced to labor on the public works, and turned over to the Governor, shall be diligently employed by him at labor upon the Western and Atlantic Railroad, or upon such other public works or improvements as he may judge to be the best interest of the State, and as shall best subserve the ends of justice.] (c)

How to be employed.

§ 4720. [The Governor shall have power to employ such guards and provide such places for the safe-keeping of such convicts, as he may deem proper.] (c)

Provision for safe-keeping.

(a) Acts of 1865-6, p. 37. (b) Acts of 1865-6, p. 37, and Acts of 1866, p. 26.
(c) Acts of 1865-6, p. 38.

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§ 4721. [The Governor shall also have power to appoint a General Superintendent of such convicts, at a salary of one thousand dollars, removable at the pleasure of the Governor, and said Superintendent, under the advice and direction of the Governor, shall have entire control and management of all convicts thus sentenced to labor on public works, and shall have power to make all needful rules and regulations touching their employment, government, and safe-keeping.] (a)

Superintend-
ent — by
whom ap-
pointed.

His duties
and powers.

§ 4722. [Convicts in charge of the Justices of the Inferior Courts, or of others deriving their authority over such convicts from such Justices, may be confined and kept in the jails of the several Counties at night, on Sundays, and other times, as such Justices may direct, and only such fees or compensation shall be paid the Jailors for receiving or discharging such convicts, or turning the key for such purposes, as may be determined by such Justices to be reasonable and just; *provided*, that where such convicts have been hired out, the party hiring shall be responsible for such costs.] (b)

Confinement
of convicts.

§ 4723. [Whenever any convict or convicts now confined, or hereafter to be confined in the penitentiary of this State, or member or members of the chain-gang now confined, or hereafter to be confined in the penitentiary of this State, or wherever else employed as such, shall be guilty of insurrection, or attempt at insurrection, such convict or convicts, or member or members of the chain-gang, shall, upon trial and conviction in the Superior Court of the County in which the crime is committed, be deemed guilty of a capital offense, and punished with death or such other punishment as the Judge in his discretion may inflict.] (c)

Insurrection

(a) Acts of 1865-6, p. 38. (b) Acts of 1866, p. 26. (c) Acts of 1866, p. 153.

APPENDIX.

LAWS HAVING REFERENCE TO THE CITY OF SAVANNAH.

- ARTICLE 1.—*The City of Savannah.*
ARTICLE 2.—*Corporation and Jurisdictional Limits.*
ARTICLE 3.—*Powers and Rights of the Corporation.*
ARTICLE 4.—*Special Powers of the Mayor and City Council.*
ARTICLE 5.—*Police Court of Savannah.*
ARTICLE 6.—*Organization of City Government.*
ARTICLE 7.—*Fire Department of Savannah.*
ARTICLE 8.—*Collection of Rents, Recovery of Possession, etc.*
ARTICLE 9.—*Party Walls and Fences.*
ARTICLE 10.—*Cemeteries in and near Savannah.*
ARTICLE 11.—*City Court of Savannah.*
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ARTICLE I.

THE CITY OF SAVANNAH.

SECTION.

4724. The city as a corporation.
4725. Mayor and Aldermen.
4726. Election of Mayor and Aldermen.
4727. In case of a tie.
4728. Organization after new election.
4729. Chairman shall be elected.
4730. Rules and regulations.
4731. Compensation of Mayor.
4732. Mayor and Aldermen—eligibility.
4733. Qualification of voters.

SECTION.

4734. Election and hours of voting.
4735. Registry of voters.
4736. Manner of registering names.
4737. Clerk's duty.
4738. List of votes to be furnished.
4739. Oath to be administered to voters.
4740. Voting illegally.
4741. Creating riot, etc.
4742. Posse may be called out.

§ 4724. The city of Savannah, as a corporation, shall continue to exist under the name and style of the Mayor and Aldermen of the city of Savannah, and by its corporate name may sue and defend in any case where a natural person might.

§ 4725. The board of Mayor and Aldermen of said city shall consist of a Mayor and twelve Aldermen, to be chosen by ballot,

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Mayor and Aldermen—election and term of office on the second Monday in October, annually by votes of those entitled to vote at such elections; and the board of Mayor and Aldermen shall hold their offices until their successors are duly elected and qualified. A quorum for business shall consist of seven Aldermen and the Mayor, or presiding chairman, except in the months of July, August, September, and October, when a majority of the Aldermen in the city shall suffice.

§ 4726. The Mayor and the Aldermen shall be separately designated on the ticket; and the candidate for Mayor receiving a majority of the votes for that office shall be declared elected; and the twelve who shall receive the highest number of votes for Aldermen shall constitute the board of Aldermen; *provided that*, should there be a failure to elect twelve Aldermen by reason of several candidates receiving the same number of votes, then those elected shall proceed at their first meeting, and after their qualification, to elect the number necessary to constitute twelve out of such number as shall have received the equal number of votes as aforesaid.

§ 4727. In case of a tie in the vote for Mayor, or if there be more than two candidates for Mayor, and no candidate shall receive a majority of all the votes for that office, the board of Aldermen, after having completed its own organization, shall elect the Mayor from among those who were candidates before the people for the office of Mayor; and in case of a vacancy in the office of Mayor, by death, resignation, or otherwise, the board of Aldermen shall elect from their own body a Mayor for the residue of the term; and in case of a vacancy in the office of Alderman, from any cause, it shall be lawful for the board to fill the vacancy, the person chosen having a majority of the votes of Aldermen present.

§ 4728. The newly elected Mayor and Aldermen shall meet on the first Monday after their election for organization, and each Alderman shall take the following oath:

“I do solemnly swear (or affirm) that I will faithfully execute the duties of an Alderman of the city of Savannah, according to the laws of the State and the ordinances of the city, to the best of my ability and understanding.”

The same oath shall be taken by the Mayor, substituting the word “Mayor” for “an Alderman.”

§ 4729. When organized according to law, the board shall elect a chairman, who shall, in case of the absence, death, or resignation of the Mayor, be vested with all his power and authority, and execute all the duties pertaining to the office; and, in the absence of both, a chairman *pro tempore*, chosen by the board, shall have the like power and authority.

§ 4730. The Mayor and Aldermen shall have power, from time to time, to adopt all rules and regulations for their own government and the orderly dispatch of business.

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§ 4731. The Mayor shall receive such salary or compensation for his services, payable out of the City Treasury, as the City Council may determine. Compensation of Mayor.

§ 4732. No person shall be eligible to the office of Mayor or Alderman of Savannah who is not, at the time of election, a citizen of the United States, and shall not have resided in the State of Georgia for one year immediately preceding the election, and continued to do so up to the time of election, and within the corporate limits of Savannah at least six months immediately preceding the election; and who shall not have paid all city taxes, or have, in his own right, sufficient real estate to satisfy all such taxes. Eligibility of Mayor and Aldermen.

§ 4733. All persons shall be qualified to vote at elections for Mayor and Aldermen of the city of Savannah who are citizens of the United States, have resided in this State for one year immediately preceding the election, and continued to do so up to the time of election, and within the corporate limits of Savannah for one month immediately preceding their registration, and four months before the election; who have attained the age of twenty-one years, and have paid all city taxes, or have, in their own right, sufficient real estate to satisfy any tax executions which may be issued against them; who shall have made all returns required by the ordinances of the city, and have been registered according to law. Qualification of voters.

§ 4734. Elections for Mayor and Aldermen of Savannah shall be held at the Court House in said city, between the hours of seven in the morning and six in the afternoon, under the superintendence of the Justices of the Inferior Court of Chatham County, and the Justices of the Peace in said city, or any three or more of them; but no person holding an office of profit or emolument under the corporation of Savannah shall be competent to preside; and it shall be the duty of the presiding Magistrates to certify the result of all such elections on tally sheets for that purpose to be made out, which tally sheets shall be delivered to the Mayor, or Clerk of Council, three days before the first meeting of the board elect. Elections—when held.

§ 4735. The Clerk of the Common Council of the city of Savannah, and, in case of his sickness or absence, any officer duly elected and appointed by the Mayor and Aldermen, or a majority of them, for that purpose, shall open a list for the registration of voters on the first Monday in January of each and every year, which list shall be kept open until two o'clock in the afternoon of the first Monday in September ensuing, when it shall be finally and absolutely closed. Registry of voters.

§ 4736. It shall be the duty of such clerk or officer, upon the application in person, and not by proxy, of any person entitled to vote as aforesaid within the time prescribed for the list to be kept open, to register the name of such person, expressing in such registry his name, age, occupation, or business, and the place of Manner of registering and description of person.

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his residence in the city of Savannah, which shall be entered by the clerk or officer on said list, opposite the name of each applicant—the applicant first paying to the Clerk of the Council, or other officer as aforesaid for the City Treasury, the sum of one dollar, which shall be in lieu of the poll tax now paid; but no person shall be entitled to registry when his continued residence within the State can not be one year, and within the corporate limits four months, immediately preceding the election. The clerk may, in any case, administer an oath to the applicant touching his right to be registered.

Applicant
may be
sworn.

Duty of
the Clerk.

§ 4737. It shall be the duty of said clerk, or other officer, to arrange and publish a list of the names so registered in alphabetical order in one of the gazettes in the city of Savannah at least once a month from the first Monday in January to the Tuesday after the first Monday in October in every year, and to affix and keep an alphabetical printed list of the names of all registered voters at the door of the Court House and the Exchange in Savannah, for one week from the Tuesday after the first Monday in October of every year; but, in said list, it shall not be necessary for said clerk to publish the age, business, or place of residence of such voter.

A list of
the names
registered to
be furnished
managers.

§ 4738. It shall be the duty of the Clerk of Council to furnish to the Magistrates presiding at the election of Mayor and Aldermen of Savannah, at the opening of the polls on the day of said election, a complete list of all the names, arranged in alphabetical order, which shall have been registered according to the foregoing provisions, together with the age, occupation, or business, and place of residence in Savannah, of every person whose name is so registered at the time of such registration, certified under the hand of said clerk, and the corporate seal of Savannah; which list shall be kept before the presiding Magistrates during such election, and, when said election is over, it shall be deposited in the office of said Clerk of Council to be safely kept by him.

Oath of
voters.

§ 4739. The presiding Magistrates shall be authorized to administer the following oath to any person attempting to vote: "You do solemnly swear that you are a citizen of the United States; that you have resided in the State of Georgia for one year immediately preceding this election, and within the corporate limits of the city of Savannah for the last four months; that you are twenty-one years of age; that you have paid all taxes due the city of Savannah, or have, in your own right, sufficient real estate to satisfy any executions against you; that you have made all returns required by the ordinances of the city; that you have been duly registered within the time prescribed by law, and that you have not yet voted this day. So help you God." Any person conscientiously opposed to taking an oath may affirm to the same tenor.

§ 4740. Any person voting or attempting to vote at such elec-

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tion, not qualified to vote, shall be guilty of a misdemeanor, and, on conviction before the Superior Court of Chatham County, shall be punished by fine or imprisonment, or both, at the discretion of the Court. Illegal voting

§ 4741. The presiding Magistrates, or any one of them, shall be authorized to commit, instantan, to the common jail, any unqualified person offering or attempting to vote as aforesaid, and any person attempting to commit, or actually committing, an act of violence, at or about the polls or place of election, and any person attempting to create, or actually creating, a riot or disturbance at or about the polls or place of election, by verbal order issued to any officer of the County or city, or by warrant under his or their hand, addressed to all lawful officers of the County and city, or to any private person specially named therein; *provided*, that any person so committed shall be entitled to be discharged or admitted to bail upon examination according to law, at any time after ten o'clock on Tuesday after the second Monday in October; *and provided further*, that no person committed upon verbal order, as aforesaid, shall be detained in jail more than twenty-four hours, unless a written detainer be lodged against him. May be committed to jail.
Creating a riot, or attempting to do so.

§ 4742. Any officer, upon the receipt of the verbal order, as aforesaid, or any officer or private person specially named, upon the receipt of the warrant, as aforesaid, shall be authorized to require the assistance of a posse; and any officer of the city or County refusing or neglecting to obey such verbal order or written warrant, shall be guilty of a misdemeanor, and, on conviction before the Superior Court of Chatham County, shall be punished by fine or imprisonment, or both, at the discretion of the Court; and it shall be the duty of the Magistrate or Magistrates, giving such order or issuing such warrant, to present the offending officer to the Grand Jury of the Superior Court at its ensuing term. Arrest—by whom made.
Officer refusing

ARTICLE II.

CORPORATE AND JURISDICTIONAL LIMITS.

SECTION.

4743. Corporate limits of Savannah.

4744. Citizenship.

4745. Jurisdiction.

SECTION.

4746. Subjects of jurisdiction—appeal.

4747. Stores, shops, and bar-rooms.

§ 4743. The corporate limits of the city of Savannah shall continue to be, and the same are hereby defined, as follows—to wit: Beginning at a point on the western side of the mouth of Bilbo's canal, and running thence, in a direct line, to a granite stone near the culvert on Thunderbolt road, and which stone marks the line of the present city limits; thence along the north side of Thun- Corporate limits of Savannah.

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derbolt road, the west side of Water's road, the north side of Lover's lane, and its line prolonged to the line of Springfield plantation; thence along the boundary line of said plantation to the bifurcation of the Augusta and Louisville roads; and thence to a point on the river bank, ten chains west of William B. Giles & Co.'s mill; thence along the line prolonged to Hutchinson's Island; thence along the shore of Hutchinson's Island to the eastern end of it; thence to the point of beginning.

Citizenship. § 4744. All persons residing within said defined limits shall be entitled to the privileges of citizenship, under the same conditions and restrictions as the residents of the wards already laid out; and all persons and property within the said defined limits, shall be subject to and bound by all the ordinances and regulations of the Mayor and Aldermen of said city, now of force and hereafter to be ordained and established; with this *proviso*, nevertheless, that the said corporate authorities shall have no power to tax any of the lands, or other property within said defined limits, not now liable to taxation, except where the plan of the city is now, or shall hereafter be, regularly and *bona fide* extended over such limits.

Jurisdiction § 4745. The said Mayor and Aldermen shall have jurisdiction over vessels and rafts lying in the river Savannah, between said city and Tybee, and their respective crews; and all porters working on board such vessels shall be subject to the ordinances of said city in regard to badges, and to porters and laborers.

Jurisdictional limits of the city. § 4746. The jurisdictional limits of Savannah shall extend one mile beyond the above defined corporate limits, so as to enable the Mayor and Aldermen, by ordinance, to prohibit the cultivation of rice within said extended limits; and any person aggrieved by the action of Council in this respect may appeal from any such proceeding to the Superior Court of Chatham County—the appeal to be tried by a special jury; and the only point in issue on such trial shall be: Is the cultivation of rice in the place prohibited injurious to the health of any portion of the citizens or inhabitants of Savannah? And if such issue shall be determined in the negative, then the prohibition shall be null and void, and not otherwise.

Jurisdiction as to stores, shops, and bar-rooms. § 4747. The jurisdictional limits of said city shall extend two miles beyond the above defined corporate limits, so as to give to said Mayor and Aldermen the control and regulation of all shops, stores, and bar-rooms, and the sole regulation and power of governing and directing taverns, and granting licenses for retailing liquors within such limits, and of preserving peace and good order therein on the Sabbath, under such rules and regulations as from time to time may be deemed advisable.

Article 3.—Powers and Rights of the Corporation.

ARTICLE III.

POWERS AND RIGHTS OF THE CORPORATION.

SECTION.

- 4748. By-laws.
- 4749. Taxation.
- 4750. Debts due the city—dignity of.
- 4751. Streets, wharves, lanes, etc.
- 4752. Street railways.
- 4753. Privilege may be farmed.
- 4754. Transportation of freight.
- 4755. Rates of fare and freight.
- 4756. System of drainage.
- 4757. Public market.
- 4758. May borrow money.
- 4759. May hold real and personal estate.
- 4760. Police officers—app'ntm't and pay.
- 4761. Shops, taverns, bar-rooms, etc.

SECTION.

- 4762. Pains and penalties.
- 4763. Fines—how collected.
- 4764. Mayor and Aldermen—powers.
- 4765. Pavements and sidewalks.
- 4766. Exemptions of persons and prop'ty
- 4767. Persons convicted—how punished.
- 4768. Exemptions from militia duty.
- 4769. Jail of Chatham County.
- 4770. Rules and regulations of the jail.
- 4771. Erection of jail.
- 4772. Jail fees.
- 4773. Ordinances continued.
- 4774. How evidenced.

§ 4748. The Mayor and Aldermen of said city shall have power and authority, from time to time, to make, ordain, and establish such by-laws, ordinances, rules, and regulations as shall appear to them requisite and necessary for the security, welfare, and convenience of the said city and its inhabitants, and for preserving health, peace, and good government within the limits of the same. May establish by-laws.

§ 4749. They are also hereby vested with full power and authority to make such assessments and lay such taxes on the inhabitants of said city, and those who hold taxable property within the same, and those who transact or offer to transact business therein, as said corporate authorities may deem expedient for the safety, benefit, convenience, and advantage of said city, and may enforce the payment of such assessments and taxes in such manner as said Mayor and Aldermen may prescribe. Besides real and personal property, the said Mayor and Aldermen may tax capital invested in said city, stocks in money corporations, choses in action, income and commissions derived from the pursuit of any profession, faculty, trade, or calling, dividends, bank, insurance, express, and other agencies, and all other property or sources of profit not expressly prohibited or exempt by State law or competent authority of the United States. Taxation.

§ 4750. Taxes and assessments due to said city shall rank as debts due to the public, whether in the administration of the assets of a decedent, or otherwise, and tax executions in favor of the city shall have the same lien on property throughout the State, as judgments have by law. Rank of tax and debts due the city.

§ 4751. They shall also have power and authority to widen, extend, or straighten any street, lane, way, or square in said city, and to open, lay out, and establish any new street, lane, way, or square within the limits of said city; to remove all nuisances, and all encroachments by wharves, erections, or obstructions of any Powers over streets, lanes, wharves, etc.

Article 3.—Powers and Rights of the Corporation.

kind along the line of the river, or along or upon any street, lane, way, or place; but whenever said Mayor and Aldermen shall exercise the power to widen, extend, or straighten a street, lane, way or square, or to open lay out, and establish any new street, lane, way, or square, to the injury of private right, they shall appoint five freeholders, who shall assess the damages sustained or the benefits or advantages derived by the owner or owners of the lot or lots fronting on said streets, lanes, ways, or squares so widened, extended, straightened, opened, laid out, or established, with power and authority to said Mayor and Aldermen to enforce the award or decision; but the owner or owners of land affected by such decision shall have the right to appeal therefrom to a special jury in the Superior Court of Chatham County, whose verdict in the premises shall be conclusive.

Street rail-
ways — how
constructed
and used.

§ 4752. [The said Mayor and Aldermen, in council assembled, and as a corporation, are authorized and empowered, to lay down, build, and construct in any of the streets of said city of Savannah (except as hereafter excepted), and to run, operate and work the same, carriage railways for the convenience of persons traveling in and visiting said city; the cars and carriages on such railways to be moved and propelled by animal power and not by steam, together with the necessary turn-outs and switches; *provided always*, that in any case where the grading for any such railway shall render a bridge or bridges necessary for the convenience of crossing a street by other vehicles, or by persons on foot, or on horseback, such bridges shall be built and kept in proper repair; also, that no such railway shall, when it can possibly be avoided, interfere with the usual or natural grade of any street; and further, that the rate of speed on any such railway shall not be greater than that allowed by present or future ordinances of said city for other vehicles; *and provided further*, that such railways shall, in all respects, be so constructed, laid, built, and used, as that other vehicles and horsemen and footmen may pass freely in and across the street or streets, used by said railway, except at the instant of the passing of a car, carriage, or train; and further, that no such railway shall ever be built or laid in or on any street which runs through a square or park in said city, or in or on any street less than forty five feet in width.] (a)

City may
use or farm
railwaypriv-
ileges.

§ 4753. [The said corporation of Savannah may either build, construct and use such railways on its own account, or let or farm the privilege to individuals or companies, under the conditions and restrictions herein contained, and at such rates of fare and other charges as the City Council of said City may by ordinance determine; *provided however*, that the said corporation in letting or farming the privileges as aforesaid, shall not sell the privilege for any money consideration other than an agreed proportion of

Article 3.—Powers and Rights of the Corporation.

the net annual earnings of such railway or railways; and that the rates of fare and other charges must beforehand be fixed by ordinance and published for general information; and Council may also, by contract, fix the time at which the city proportion of earnings shall be made payable, and either by ordinance or contract requiring indemnity for the payment of its said proportion.] (a)

§ 4754. [It shall be the right of said City Council to determine what transportation, in addition to passengers and baggage, may be made on such railways; *provided*, that permission to carry freight on such railways by any company or contracting party, or by the city corporation, shall not be granted until the question of carrying freight, shall have been submitted to the ballot of the legal voters of said city and the County of Chatham, and by a majority of such voters been approved.] (a)

Question
of carrying
freight—how
determined.

§ 4755. [After the rates of fare shall have been fixed by said City Council, for and upon such railway or railways, such rates shall never be increased, except by authority from said City Council; and in case the privilege of carrying freight be allowed by ballot of the people as aforesaid, the City Council shall always have the right to fix, limit, and change the rates of such freight; and said City Council shall never depute, delegate, or assign the right to construct, operate, and use such railways for a longer period than ten years; after which, the City Council may, from time to time, renew the lease, grant or permission to the same party or parties, or grant the permission to other and different persons, and the City Council may always, in advance, fix the terms (other than those hereinbefore prescribed) on which such railways may be built and used and managed.] (a)

Rates of fare
and freight
—how fixed.

§ 4756. The said Mayor and Aldermen shall also have power to establish a complete system of drainage in and around said city, for the health and comfort of its inhabitants; but in cases where private property may be taken, or private right be injured for such purpose, the same proceedings for assessing and paying the damage incurred shall be had as are pointed out in Section 4751.

System of
drainage.

§ 4757. They shall also have the complete control and management of the present public market, and any other that may be established in said city, and the regulation of the same, and of sales and purchases therein.

Public
market.

§ 4758. The said Mayor and Aldermen shall have power to borrow money and contract loans for the public good, and to subscribe for works of internal improvement, which, in their judgment, may be to the interest of said city, and to issue bonds and pledge the property, faith, and credit of the city for the payment of such subscriptions; *provided* no subscription or outlay of money shall be made for any such work out of the city, except upon the

May borrow
and loan
money.

Proviso.

Article 3.—Powers and Rights of the Corporation.

recommendation of a public meeting of the citizens of Savannah, called for the purpose; and all bonds heretofore issued by said Aldermen and still outstanding, are hereby declared legal and valid.

§ 4759. The said city, in its corporate capacity, may hold real and personal property, and may sell and dispose of all or any part of the domain, property, land, lots, or any personal property to it belonging, from time to time, on such terms as to said corporation shall seem expedient; but no street, lane, or thoroughfare, after having been dedicated to public uses (including all present dedications), shall be aliened by said corporation, except by authority of the General Assembly. All rights of property existing in said corporation at the adoption of this Code, are hereby expressly reserved to it.

§ 4760. The said Mayor and Aldermen shall have power to appoint all such officers under them as they may deem proper for the police and good government of said city, and to make all such rules and regulations for the government and compensation of such officers as said Mayor and Aldermen may deem proper. Besides commissioners of pilotage, they may also appoint the harbor master, vendue master, port wardens, health officers, inspectors of every sort, gaugers, and measurers, and fix their duties and compensation; but all appointments to office under said Mayor and Aldermen, existing at the adoption of this Code, shall continue until the incumbents of said offices respectively shall be superseded by expiration of the term of the same respectively, or by resignation, or by authority of law, or by ordinance of said city, for incapacity or improper conduct, when said Mayor and Aldermen are not, by this Code or by other statutory enactments, or by the Constitution of this State, prevented from declaring a vacancy.

§ 4761. The said Mayor and Aldermen shall have the control and regulation of all shops, taverns, stores, and bar-rooms, within the corporate and jurisdictional limits of said city, and the regulation of tavern license, and licenses to retail liquors within the same; and also the power to regulate the conduct of peddlers and itinerant traders within the same limits, by taxation or otherwise. They shall also have the power to pass all ordinances, rules, or regulations, proper or necessary for the government of persons of color within the city and its jurisdictional limits.

§ 4762. They shall have power and authority to impose and inflict such pains, penalties, and forfeitures, for violations of the by-laws or ordinances of the city, as shall, in their judgment, be conducive to the good order and government of said city; *provided*, that no fine or forfeiture, for one individual offense, shall exceed one hundred dollars, and no imprisonment shall be for more than thirty days; although the said Mayor and Aldermen may impose and inflict several and distinct fines and imprisonments, at the same meeting of Council, for several and distinct offenses.

Article 3.—Powers and Rights of the Corporation.

§ 4763. Fines, penalties, and forfeitures, shall be levied by warrant or execution of distress, and sale of the offender's goods and chattels, if any to be found; otherwise, of lands and tenements; and in case of no such property, then the defendant may be imprisoned in the common jail, or made to do public work, as hereinafter provided. Fines and penalties — how collected.

§ 4764. The Mayor, or any one Alderman, shall be vested with the power of a Justice of the Peace, so as to enable him, within the corporate and jurisdictional limits of the city, to suppress riots or breaches of the peace, arrest, confine, or bind over, offenders against the laws of the State, to answer for such offenses before the proper tribunal. Mayor and Aldermen vested with the powers of Justice of the Peace.

§ 4765. Said Mayor and Aldermen shall have power to order such pavements and sidewalks, and repairs of the same, as they may deem proper; and upon the failure of any person to comply with such order within the time prescribed, the said Mayor and Aldermen may have the same done, and levy and collect the expenses thereof by execution against the lands and goods and chattels of the owner of the lot, whether holding the same under leasehold title from the city or by title otherwise derived. Pavements and sidewalks.

§ 4766. The Mayor and Aldermen, during their continuance in office, shall be exempt from jury duty; and the Springfield plantation, and all other property of the city now exempt from taxation by the State, shall continue to be so exempt. Mayor, etc. exempt from jury duty.

§ 4767. They shall have power to establish work-houses and treadmills, and to cause labor and confinement therein, and also on the public streets, squares, or lanes, by persons, whether white or colored, convicted of offenses against the ordinances of the city or laws of the State in relation to said city. Persons convicted of offenses — how punished.

§ 4768. The officers and privates of the Police, or City Watch of Savannah, shall be exempt from the performance of militia duty under the peace establishment of this State; and they, and the Engineer and Assistant Engineer of the Savannah Water Works, shall be exempt from jury duty. Persons exempt from militia duty.

§ 4769. The jail of Chatham County shall continue, as heretofore, under the direction, control, and management of the Mayor and Aldermen of Savannah, with all the rights and duties of commissioners of the same, and with power to them to appoint a Jailor, and other necessary officers, for a term not exceeding three years; which said Jailor and other officers shall respectively give such bond, and be allowed such compensation, as the Mayor and Aldermen shall, by ordinance, prescribe; and which said Jailor and other officers shall be removable from office by said Mayor and Aldermen, for any misconduct which shall, in their opinion, furnish sufficient cause. The jail of Chatham County.

§ 4770. And said Mayor and Aldermen shall have power to pass all ordinances, resolutions, rules, and regulations, for the regulation of the jail and the government of the Jailor and other offi- Rules and regulations respecting the jail.

Article 3.—Powers and Rights of the Corporation.

cers, and all persons confined within said jail, as said Mayor and Aldermen shall, from time to time, deem proper, and as shall not be repugnant to law; and the Jailor shall be answerable for all escapes from such jail, to the same extent and in the same manner as the Sheriff or other keeper of a jail may, by the general law, be.

§ 4771. All laws of force, for the erection of any new jail by the Justices of the Inferior Court of Chatham County, are hereby continued in force; but such new jail, when erected, shall become the jail of said County, under the direction, control, and management of said Mayor and Aldermen, as in the preceding Section mentioned; but the said jail shall be subject at all times to the visits and inspection of said Justices, and of the Grand Inquests of said County and city, who may report to the City Council of said city any misconduct of the officers thereof, or evils existing therein, and recommend to said City Council any mode of redress or remedy therefor.

§ 4772. Persons committed to said jail on other than civil process, or process from the corporate authorities of Savannah, shall be a charge on the County from which the prisoner may be sent; and said city authorities may demand periodical settlements from such County for the fees accruing for such prisoner, and in case the Inferior Court of any such County shall refuse to make periodical settlements or payments, it shall be lawful for the Superior Court of such County, by mandamus or other process, on the application of the said Corporation of Savannah, or the Jailor, to compel such settlement and payment.

§ 4773. All ordinances of said city existing at the time of the adoption of this Code, and not repugnant thereto, shall be of full force and effect until the same be altered, modified, or repealed by the Mayor and Aldermen of said city.

§ 4774. All ordinances, by-laws, rules, and regulations of said city, published by authority of said Mayor and Aldermen, and promulgated as such by said authority, shall be evidence in all the Courts of this State to the same extent that laws of the State, as published by authority, shall be evidence of such laws; and when, in any case, an exemplification of any such ordinance, by-law, rule, or regulation, minute of Council, or any paper of file in any of the departments of the government of said city may be required, the same may be authenticated under the official signature of the Mayor, or acting Mayor, and the seal of said city.

ARTICLE IV.

SPECIAL POWERS OF THE MAYOR AND CITY COUNCIL.

SECTION.

4775. Special powers of Mayor.

4776. Ordinances and police regulations.

SECTION.

4777. Nuisances—how abated.

4778. Paupers.

Article 4.—Special Powers of the Mayor and City Council.

§ 4775. The Mayor of the city of Savannah, for the time being, and, during his absence or inability to discharge his official duties, the Chairman of Council, or such other officer as may by law, or ordinance, or vote, or rule of Council, of the said city, be at such times his substitute, shall have full power and authority to issue warrants for the arrest of all persons charged, upon affidavit before such officer or other lawful magistrate, with having committed, within the limits of the city of Savannah, offenses against any penal law of this State, and to take the examination of such persons, and the same to discharge or commit to prison, or let to bail, according to law, to answer such charge before the proper Court having jurisdiction of the same, in the same manner as Justices of the Peace of the several Counties of the State now or hereafter may have by law, and to issue such warrant according to law, to be executed within the jurisdictional limits of Savannah—all which warrants may be executed by the Marshal or Deputy Marshal, or any Constable of said city, and be returned before said Mayor, or his temporary official substitute, as aforesaid. And the said Mayor or substitute as aforesaid, may, by warrant issued as aforesaid, cause suspected places to be entered, in as full and ample a manner as any other Magistrate of this State may, with a view to the detection and prevention, or punishment of offenses, within said jurisdictional limits, against the laws of this State, or the ordinances of said city.

Special powers of Mayor.

§ 4776. The Mayor and Aldermen of said city shall have full power and authority to pass all such ordinances and establish such police regulations, not repugnant to the Constitution and laws of this State, as in their judgment and discretion may be deemed best calculated to suppress, within the jurisdictional limits of said city, the practice of illicit trading with persons of color, and receiving stolen goods from them, and of affixing and enforcing such penalties for the violation of such ordinances and police regulations as said Mayor and Aldermen shall deem proper, and as shall not be inconsistent with such Constitution.

Ordinances and police regulations.

§ 4777. The said Mayor and Aldermen shall have power, by ordinance, resolution, or order of Council, to cause to be abated within the jurisdictional limits of said city, any nuisance which may tend to the immediate annoyance of the citizens in general, may be manifestly injurious to the public health or safety, or tend greatly to corrupt the manners and morals of the people, or any considerable part thereof, whether the nuisance be such at common law or by statute of this State, or by ordinance of said city passed in conformity with law, and to enforce the order for abatement and removal of such nuisance by the Marshal and other civil force of said city. And said Mayor and Aldermen shall have full power and authority to establish such system of quarantine and make such sanitary regulations anywhere on the Savannah river, or elsewhere in Chatham County, as may in their judg-

Nuisances—how abated.

Quarantine and sanitary regulations.

Article 5.—Police Court of Savannah.

ment be proper to prevent the spread of contagious or infectious disease in said city.

§ 4778. Said Mayor and Aldermen shall have full power and authority to pass all ordinances and make all such rules and regulations as may, in their judgment, be proper to prevent the influx or immigration of paupers into said city; and nothing in the general laws of the State shall ever be considered in derogation of the powers hereby conferred upon said city authorities on said subjects; and any and every ordinance of said city now existing in relation to the influx of paupers therein shall be considered as hereby confirmed.

Existing ordinances continued.

ARTICLE V.

POLICE COURT OF SAVANNAH.

SECTION.

4779. Sessions and jurisdiction.

SECTION.

4780. Officers may collect cost.

Police Court a Court of record.

Sessions and jurisdiction.

Appeal may be entered.

Certiorari granted—when.

Officers of Police Court may collect costs.

§ 4779. The Police Court of said city is hereby continued a Court of Record, and the Mayor or acting Mayor is hereby authorized to preside in said Court, and to hold sessions thereof as often as to him may appear to be necessary. Said Court shall have cognizance of all offenses against the ordinances of said city, and the laws of this State touching said city, with power to inflict the proper punishment by fine and imprisonment, or other penalty prescribed by such laws and ordinances from time to time, and to enforce the same by mittimus, directed to the Marshal of said city or any lawful Constable thereof, and to the jailor of Chatham County when necessary; and said Court shall have power to commit to jail any and all person and persons who may disturb said Court during its sittings, or who may in any manner be in contempt of its lawful authority; but an appeal may be entered or taken from any judgment or decision of said Court (except a commitment for contempt), to the Mayor and Aldermen of said city, in Council assembled, all costs being first paid and bond given to abide the decision of said Council, and no certiorari shall ever be allowed or granted until such is entered and the same is heard and determined by Council; and on the confirmation by Council of the decision or judgment of said Police Court, in whole or in part, no certiorari shall be allowed until the fine inflicted or confirmed by Council, and all costs shall be paid into the Treasury of said city.

§ 4780. The Clerk of Council, the Marshal of said city, and the officers and members of the Police of said city, who are hereby declared to be *ex officio* Constables of said city, shall be officers of said Police Court; and they are hereby authorized to demand and receive for services rendered or duties performed in said Court, such fees and costs for themselves, to be collected out of the defendants, as may be established by ordinance of said city.

Article 7.—Fire Department of Savannah.

ARTICLE VI.

ORGANIZATION OF CITY GOVERNMENT.

SECTION 4781. Organization of City Government.

§ 4781. The organization of the City Government of Savannah, as existing at the time of the adoption of this Code, shall continue until superseded or modified in conformity with the provisions of said Code.

ARTICLE VII.

FIRE DEPARTMENT OF SAVANNAH.

SECTION.

4782. Savannah Fire Company.
4783. May purchase and hold property.

SECTION.

4784. Election and duty of officers.
4785. Other companies may be estab'd.

§ 4782. The corporation known as the "Savannah Fire Company," and their successors, shall continue to exist under said corporate name, and under that name to sue and be sued, plead and be impleaded, answer and be answered to, in any and all the Courts of this State, and to have, exercise and enjoy all the powers granted to them not repugnant to the Constitution of the United States and of this State.

Fire company and their successors.

§ 4783. Said corporation shall continue invested with power to hold all funds and property now belonging to it, and such additions to said funds or property as may hereafter be made, and to purchase and hold real and personal estate; and also to receive all donations, legacies and bequests which may be made to it, to be held, used and enjoyed for the purposes following, that is to say, that the rents, interests and profits of all such property which said corporation may purchase or be interested in, and the interests of all loans which it has made or shall make, shall be used and applied to the purpose of relieving the distresses of its members, and to and for no other use or purpose whatsoever.

May purchase and hold property.

Profits—how appropriated.

§ 4784. Said corporation shall elect their officers in the manner pointed out in the ordinances of the City Council of Savannah, and nothing herein contained shall be so construed as to make said Fire Company independent of said City Council; but that it shall continue to be subject to the same control of the City Council as that body has heretofore exercised over it. Said Fire Company shall, on the first Monday in January, annually, report to the City Council of Savannah what property they have purchased or become interested in, what loans they have made, the state of their funds, what disbursements they have made, and for what benevolent purposes.

May elect officers.

Not independent of City Council

Shall report first Monday in January annually.

Article 8.—Collection of Rents, Recovery of Possession, etc.

§ 4785. The Mayor and Aldermen shall have power to appoint such officers and agents, and make such rules and regulations for such appointments, and for the keeping up of an efficient force for preventing and extinguishing fires in said city, as the said Mayor and Aldermen shall deem expedient; but nothing herein contained shall be construed to repeal the charter of any fire company now existing by law.

Mayor and
Aldermen
may estab-
lish other
fire compa-
nies.

ARTICLE VIII.

COLLECTION OF RENTS, RECOVERY OF POSSESSION, ETC.

SECTION.

4786. Distress for rent.
4787. Claim to property distrained.
4788. Lien of distress warrants.

SECTION.

4789. Dispossessing tenant.
4790. Warrant, how obtained—defenses.
4791. Contracts for rent bear interest.

§ 4786. Rent due by any person or persons, for lands or tenements lying within the city of Savannah, or the precincts thereof, may be recovered by distress warrant, issuing on the affidavit of the person claiming the same, his agent, or attorney at law, or in fact, for the sum claimed to be due. If such sum, exclusive of interest, do not exceed fifty dollars, such affidavit must be made before a Justice of the Peace, and the warrant be issued by such Justice, and be directed to and executed by any lawful Constable of the County and levied on any property of the defendant; and the advertisement and sale shall be as in other cases of sale under execution. If the rent shall exceed fifty dollars, besides interest, the affidavit must be made before the Judge of the Superior Court or Judge of the City Court of Savannah, or any of the Justices of the Inferior Court of Chatham County, who shall issue a warrant authorizing the Sheriff of the City Court of Savannah, or any lawful Constable of said city, to distrain on any property belonging to the defendant, and to advertise and sell the same as in cases of execution on judgment; but in every case of levy under this Section a replevy shall be allowed, when the defendant or his agent shall make oath that the rent claimed, or some part thereof, is not due, and shall give security for the eventual condemnation money; and in that case, the levying officer shall return the papers to the Court having jurisdiction, and the issue thus tendered shall be there tried and determined by a jury, as in cases of claim; and in case of verdict for the plaintiff, judgment shall be entered up and execution issued against principal and security, as in cases of appeal.

Rent—dis-
tress for.

Warrant—
by whom is-
sued and to
whom di-
rected.

Advertise-
ment and
sale.

If rent ex-
ceeds \$50.

Replevy—
how made.

Issue and
trial.

Claim to
distrained
property.

§ 4787. When property distrained shall be claimed by a third person, the claim shall be on oath of such person, or his agent, and shall be put in, returned, and determined, as in other cases of claim.

Article 8.—Collection of Rents, Recovery of Possession, etc.

§ 4788. No preference shall be given to persons distraining for rent, where there is a judgment against the person or property so distrained; but the lien of such distress warrant shall be the same as the lien of a judgment on the property of the defendant. And where any person leasing or renting any lot or lots, tenement or tenements, within the city of Savannah, shall fail to pay the rent when the same shall become due, [or] (a) shall refuse to deliver possession to the lessor, at the expiration of his lease or contract for rent, the Judge of the Superior Court, or any one of the Justices of the Inferior Court of Chatham County, or the Judge of the City Court of Savannah, may issue a writ of possession, directed to the Sheriff of the City Court of Savannah, or any lawful Constable of said city, commanding said Sheriff or Constable to deliver possession of the premises to the lessor—which writ shall be by such officer immediately executed and returned.

Lien of distress warrant.

Tenant failing to pay and deliver possession may be dispossessed.

§ 4789. The application to a Judge or Justice, under the preceding Section must be on the affidavit of the party applying, or his attorney, or agent; but when the tenant shall declare, on oath in writing, that his lease, whether oral or written, is not expired, or that he does not hold the premises either by lease or rent from such person making such application, or by any one holding under him by rent or otherwise, [or where the landlord shall seek to remove the tenant, on the ground that the rent is due and remains unpaid, if the tenant will make affidavit that the rent claimed is not due,] (a) he shall not be removed from the possession of said premises, but the Sheriff or Constable shall return the proceedings to the next [City Court of Savannah, unless the same shall be held within ten days; in that case, they shall return the proceedings to the next term thereafter,] (b) and the fact shall be there tried; but if determined against the tenant, he shall pay double the rent reserved or to be due, and the party entitled to possession shall immediately be put in possession by order of said Court; but the tenant making oath in order to retain possession shall not be entitled to retain possession, except on giving bond and good security, to be approved of by the Sheriff or Constable, conditioned for paying double the rent reserved, or to be due, if the proceedings in the City Court shall be determined against such tenant—and said bond, when so taken, shall be returned into Court with the other proceedings; [and when the jury shall find against the tenant, and assess the amount of double rent, the plaintiff may enter up judgment at once against the tenant and his security on the bond, in the same manner that judgment may now be entered up against the principal and his security upon appeal.] (a)

Applicant must make oath.

§ 4790. Contracts for rent, whether oral or written, shall bear interest from the time the rent becomes due; and all actions for

Contracts for rent bear interest.

(a) Acts of 1865-6, p. 35. (b) Acts of 1866, p. 57.

Article 9.—Party Walls and Fences.

recovery of rent in arrear, before any Court within the city of Savannah, shall be triable at the first term of the Court to which the action is returnable.

ARTICLE IX.

PARTY WALLS AND FENCES.

SECTION.

4791. Agreements to build party walls.

4792. Building by one party alone.

SECTION.

4793. Repairing by one alone.

4794. City Council may further regulate.

Contracts to
build and re-
pair party
walls and
fences.

§ 4791. [Whenever owners of adjoining lots, or parts of lots of land, in the city of Savannah, shall, in writing, agree to build a party wall or fence on the line of the respective owners, and to keep the same in repair, said owners may record such agreement in the Clerk's office of the Superior Court of Chatham County, within the time and on the terms for recording conveyances of real estate; and such agreement, so recorded, shall operate as a covenant with the land, and shall be binding on said respective owners and their heirs and assigns; and the same effect shall be given to a similar agreement for the repairing only of a party wall or fence, such agreement being properly recorded as aforesaid.] (a)

One may
build alone,
on notice to
other owner.

§ 4792. [Whenever the owner of a lot, or part lot of land, in said city, shall desire to put up a wall or fence on the line of such lot, or part lot, dividing it from an adjoining lot, or part lot, on the contiguous line of which there may be no wall or fence, such owner so desiring to build may give twenty days' notice to the adjoining owner, or his agent, of such desire to build, and if such adjoining owner shall neglect or refuse to join in the expense of building and keeping in repair such wall or fence, then the party giving such notice shall be entitled, and is hereby authorized, to put up and build such wall or fence, of the usual thickness and with the proper foundation, partly upon his own ground and partly upon the adjoining ground, on application to, and permission granted by, the City Council of said city of Savannah; and in this case, when the other owner is desirous of building or using such wall or fence, he may use so much thereof as may be necessary by paying to the builder, or his heirs or assigns, one-half of its value, and then the two owners shall become joint owners of said party wall or fence, and be equally bound for all necessary repairs. Such half value may be recovered by the builder, his heirs, or assigns, from the party so as aforesaid using the said wall or fence, after it shall have been built as aforesaid, by action in any Court of competent jurisdiction; and such cause of action shall be a lien on such adjoining lot, or part lot, until payment of said half value; *provided, always*, that nothing herein contained shall be so construed as to authorize any person to put up, build,

Builder may
recover half
value of wall
—when.

Article 10.—Cemeteries in and near Savannah.

or erect, any wall, fence, or other structure, in said city, contrary to a fire or other lawful ordinance of Savannah.] (a)

§4793. [In any case where there shall be a dividing fence between two lots, or part lots, in said city, which may require repair, the party refusing to pay his just proportion of expenditure for any necessary repair made by the other party for the benefit of both, may be compelled to pay such proportion at the suit and on the recovery of such other party before any Court of competent jurisdiction; *provided*, it be shown on the trial that the said refusing party was duly notified of the necessity of such repair, and by himself, or his agent, declined to pay said proportion.] (a)

§4794. The City Council of Savannah is authorized to make, by ordinance, such further rules and regulations concerning dividing walls and fences as are not in conflict with this Article, or with the Constitution and laws of this State.] (a)

ARTICLE X.

CEMETERIES IN AND NEAR SAVANNAH.

SECTION.

4795. Owners and keepers of cemeteries.

4796. Interments to be reported.

4797. Owners, etc., failing in duty.

SECTION.

4798. Exemptions from jury duty.

4799. Acts continued in force.

§4795. It shall be the duty of each and every owner or keeper of a cemetery (other than a private cemetery or burial place), within five miles of the extended limits of the city of Savannah, to keep a correct record, or registry, in a well bound book, of all interments made by him, or his assistant or assistants, of the remains of any deceased person, showing his or her name, nativity, age, place of residence, and death, day of burial, disease or accident occasioning the death of the deceased, and the name of the attending physician, if any.

§4796. Each and every such person owning or keeping a cemetery, as aforesaid, shall make out and hand to the Clerk of Council of Savannah a regular monthly report of all interments made by him, or by his assistant or assistants, of all deceased persons dying within the city of Savannah, or elsewhere, and buried as aforesaid, and make out and furnish a weekly report of such interments to the Secretary of the Board of Health of said city, whenever said board shall meet weekly, and monthly when its meetings shall be monthly.

§4797. Any person offending against any of the provisions of the two immediately preceding Sections shall, on conviction before the Police Court of Savannah (which is hereby invested with jurisdiction in all such cases), be fined in the sum of thirty dollars for each and every offense—one-half of the fine to the informer, and the other half to the corporation of Savannah; but the de-

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fendant may appeal from the decision of said Police Court to the Mayor and Aldermen in council assembled, under such rules and regulations as are prescribed by law.

§ 4798. The keepers of public cemeteries in and near Savannah shall be exempt from jury duty in the Superior and Inferior Courts of Chatham County, and in the City Court of Savannah.

§ 4799. The Act of 27th December, 1847, incorporating the Evergreen Cemetery Company of Bonaventure, and so much of the Act of 18th February, 1854, as refers to the cemetery for the deceased members of the Roman Catholic congregation worshipping in the city of Savannah, are continued in full force.

ARTICLE XI.

CITY COURT OF SAVANNAH.

SECTION.

- 4800. A court of record.
- 4801. Jurisdiction.
- 4802. Judges—election and term of office.
- 4803. Election—when held.
- 4804. Vacancies—how filled.
- 4805. Failure to elect.
- 4806. Judge's salary.
- 4807. His oath.
- 4808. Solicitor General—his fees.
- 4809. Clerk and Sheriff.
- 4810. Confession of judgment.
- 4811. *Habeas corpus*.
- 4812. Claims and mortgages.
- 4813. Session of Court—trial first term.
- 4814. Suits—how commenced.
- 4815. Lien of judgments.
- 4816. Adjournments of Court.
- 4817. Production of papers.
- 4818. Rules of practice.
- 4819. Jurisdiction and power.
- 4820. Parties may select Judge—when.
- 4821. Answer—when and how filed.
- 4822. Verdicts, confessions, and appeals.
- 4823. Sales under execution.
- 4824. Judgments—when entered.
- 4825. Stay of execution.
- 4826. Claims to real property.
- 4827. Bail—how sued out and served.
- 4828. Attachments.
- 4829. By whom issued.
- 4830. Judgment—to whom directed.
- 4831. By whom levied.
- 4832. Declaration—when filed.
- 4833. Garnishments.
- 4834. How sued out and served.
- 4835. Notice—how served.
- 4836. Parties—how made.
- 4837. *Seire facias*—how served.
- 4838. Witnesses, interrogatories.
- 4839. Testimony *de bene esse*.
- 4840. Judge may attest deed, etc.

SECTION.

- 4841. Judge, Clerk, and Sheriff's duties.
- 4842. Oath of Clerk and Sheriff.
- 4843. May sue and be sued—process.
- 4844. Attorney's fees.
- 4845. Attachment by Clerk.
- 4846. Records and minutes.
- 4847. Jurors—how selected, etc.
- 4848. How drawn.
- 4849. Persons subject to serve.
- 4850. Jury boxes and keys.
- 4851. Defaulting jurors.
- 4852. Not to serve longer than one week.
- 4853. Perishable property levied on.
- 4854. *Certiorari* proceedings.
- 4855. Sheriff may appoint deputy.
- 4856. Judge may appoint Bailiffs.
- 4857. Constable's duty and fees.
- 4858. Fees of Sheriff, etc.
- 4859. Summary proceedings.
- 4860. Notice of hearing.
- 4861. Powers of Court in such cases.
- 4862. Persons subject to such process.
- 4863. Clerk, Sheriff, and Bailiff's duty.
- 4864. Vexatious arrests.
- 4865. Arrests under civil process.
- 4866. Hearing and return.
- 4867. Witnesses and examination.
- 4868. Appeal not allowed.
- 4869. Salary of Solicitor General.
- 4870. Money arising from fines etc.
- 4871. Justices of the Peace.
- 4872. Peace warrant and bond.
- 4873. Jury fees—attorney's liability.
- 4874. Clerk and Sheriff's fees.
- 4875. Insolvent debtors.
- 4876. Balance due defendant.
- 4877. Rules of practice.
- 4878. Continuances.
- 4879. Jailor's duty.
- 4880. Sheriff's statement to Judge.
- 4881. Sentence and punishment.

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§ 4800. The City Court of Savannah, by that name, and as a Court of Record in the city of Savannah, shall continue to exist, and shall have cognizance of civil cases, not involving title to real estate, where the damages or cause of action shall not exceed the sum of [one thousand] (a) dollars, exclusive of interest, and shall be above the jurisdiction of a Justices' Court; and cases of tort, where the damage claimed shall not exceed [one thousand] (a) dollars; and the said Court shall have criminal jurisdiction of all minor offenses committed within the jurisdictional limits of the city of Savannah, and which do not subject offenders to confinement in the penitentiary, and of such other cases as may be hereinafter provided for.

Name and
style as a
Court of Re-
cord.

§ 4801. The ordinary civil jurisdictional limits of said Court shall embrace the corporate limits of the city of Savannah, now and hereafter established, and its criminal jurisdictional limits shall embrace the entire jurisdictional limits of said city as now fixed and hereafter to be fixed by law.

Ordinary
civil juris-
diction.

§ 4802. The Mayor and Aldermen of the city of Savannah shall have the election, by ballot, of the Judge of said Court, who shall hold his office for three years, and until his successor is elected and qualified, unless sooner removed by the Governor, on the address of two-thirds of both branches of the General Assembly for that purpose. He shall be commissioned by the Governor, on proof of his election, under the hand of the Clerk of Council, and seal of the city of Savannah.

Judge—
election and
term of of-
fice.

§ 4803. The next regular election of Judge of said Court shall be at the first regular meeting of the City Council of Savannah, in January, in the year eighteen hundred and sixty-three, and regular elections for Judge of said Court shall be every three years thereafter, but the present organization of said Court shall continue until the Judge or other officers thereof shall be displaced or superseded by law, and the City Council of Savannah shall have power to fill all vacancies in such offices occurring from death, resignation, or otherwise.

Election—
when held.

§ 4804. Should a vacancy in the office of Judge of said Court, by death, resignation, or otherwise, occur before the said first meeting in January, eighteen hundred and sixty-three, the said Mayor and Aldermen shall, at their first regular meeting after such vacancy shall have occurred, proceed to elect a Judge to fill such vacancy; and whenever a vacancy shall occur thereafter, from any cause, the said Mayor and Aldermen shall, at their first meeting, elect a Judge to supply such vacancy.

Vacancies—
how filled.

Vacancies
occurring be-
fore the first
of January,
1863 — how
filled.

§ 4805. Should the said Mayor and Aldermen fail to elect a Judge at the time appointed for a regular election, it shall be lawful for them to elect at their next regular meeting.

Failure to
elect a Judge

§ 4806. The Judge of said City Court shall have an annual salary [of two thousand dollars] (a) that shall not be increased or

Judge's
salary.

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diminished during his continuance in office, which salary shall be paid in monthly installments, out of the City Treasury of Savannah.

His oath. § 4807. He shall, before entering on the duties of his office, take and subscribe an oath faithfully and impartially to discharge such duties to the best of his abilities and understanding, and agreeably to the Constitution of this State and the Constitution of the United States, and to support said Constitutions, and said oath shall immediately thereafter be forwarded to the Governor, and filed in the Executive Department.

Solicitor General—who shall be. § 4808. The Solicitor General of the Eastern District shall prosecute for all offenses cognizable before said Court, but in his absence, the Judge shall have power to appoint a Solicitor General, *pro tempore*, who shall receive the same fees as are allowed by law to the Solicitor General in all cases conducted by him.

His fees. § 4809. The Clerk and Sheriff of said Court shall be elected by said Mayor and Aldermen for such term respectively, and under such qualification and other rules and regulations as they shall prescribe, [and the Sheriff of said Court may appoint one or more deputies, at his discretion, and he shall have the same authority to execute criminal warrants as is now vested in the Sheriff of the County of Chatham.] (a)

Clerk and Sheriff—their election. § 4810. No confession of judgment shall be entered up in said Court, unless the defendant resides in the corporate limits of Savannah, and unless the cause shall have been regularly sued out and docketed, nor until such cause is called in order by the Court for trial.

Confession of judgment. § 4811. The Judge of said Court shall have power to issue writs of *habeas corpus*, and to hear and dispose of the same, in all cases arising or occurring within the jurisdictional limits of Savannah, in the same way and with the same powers as the Judge of the Superior Court, and to discharge, admit to bail, or remand to jail any prisoner, according to his discretion and the law of the land, but nothing herein contained shall be construed to lessen or take away the powers of the Judge of the Superior Court, or Judge of the County Court of Chatham County.

Habeas corpus—powers of the Court in relation to. § 4812. The said City Court shall have jurisdiction of all claim cases where personal property is levied on under execution, or other process from said Court; and all mortgages upon personal property, for an amount within the jurisdiction of said Court, may be foreclosed by the Judge of the same, in the same way or manner as in the Superior Court, and all subsequent proceedings thereon shall be in said City Court, and such as are conformable to the general law of the State.

Jurisdiction in claim cases. Mortgages. Sessions. Trial first term. § 4813. The sessions of said Court shall be held on the first Monday in February, May, July, and November of every year, and all causes, except attachments, shall be triable at the first

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term. [The Judge of said Court may, in his discretion, hold monthly sessions, for the trial of criminal cases, and to draw Grand and Petit Jurors for said monthly sessions, either in term time or vacation.] (a)

§4814. All suits in said Court (except attachment cases) shall be commenced at least fourteen days before the term to which they are returnable, and the process shall be served on the defendant at least ten days before the session of the Court. Suits shall in other respects be conformable to the mode of proceeding in the Superior Courts, but the process shall be annexed by the Clerk of said City Court, be tested in the name of the Judge thereof, and be directed to and served by the Sheriff thereof.

Suits—how commenced and prosecuted.

§4815. All judgments obtained in said Court shall be a lien on all property belonging to the defendants throughout the State, but property exempt from levy and sale under the general law of the State shall be exempt from levy and sale under process from said Court; and all executions shall be tested in the name of the Judge, issued and signed by the Clerk, directed to the Sheriff of the City Court of Savannah, and all and singular the Sheriffs of the State of Georgia, and may be levied on all property of the defendants throughout the State; but the Sheriff of said City Court may levy all such executions on property within any part of the County of Chatham.

Lien of judgments.

Exemptions.

Executions—how issued.

§4816. In the absence of the Judge of said Court from indisposition or otherwise, it shall be the duty of the Clerk or Sheriff of the same to open and adjourn said Court to such day as the Judge may, in writing, direct.

Adjournments of Court.

§4817. The said Court is empowered to compel the production of books, papers, and writings, in the possession of any party to a suit in said Court, containing evidence pertinent to the cause in question, under the rules and regulations provided by law for other Courts of Record.

May compel the production of books, papers, etc.

§4818. The mode of conducting proceedings in said Court, and carrying to trial suits therein, shall be the same as in the Superior Court, except as may be otherwise herein provided.

Rules of practice.

§4819. The Judge of said City Court shall have power and authority to hear and determine all civil causes of which the said Court has jurisdiction, and to give judgment and award execution thereon; *provided, always*, that either party in any cause shall be entitled to a trial by jury, upon entering a demand therefor, in writing, on or before the call of the docket of said Court at the term to which the cause is returnable.

Jurisdiction of the Court.

Trial by jury.

§4820. [Whenever, in any case now pending or hereafter brought to said Court, the Judge thereof shall, from any cause, be disqualified from presiding, the parties litigant, or the respective counsel, may select any attorney practicing in said Court to

Parties may choose attorney for Judge.

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preside in such case, and the Judge shall have such consent entered on the minutes; and the attorney so selected shall exercise all the functions of Judge in such case.] (a)

Answer—when and how filed. § 4821. The defendant shall file his answer in writing, on or before the opening of the Court, at the return term of the suit, and the pleadings shall conform to the general law of the State. In case of default, the same shall be noted on the docket; and Default and proceedings thereon. in such case, the plaintiff shall be entitled to proceed *ex parte*, and establish his demand, upon the proof thereof, at such return term.

Verdict and confession of judgment. § 4822. In every case where a verdict may be rendered by a jury, or where a jury trial may have been demanded, and either party shall confess judgment, reserving the right to appeal, an appeal may be entered by either party to a special jury in said City Court, as in cases of appeal in the Superior Court; and the Appeal and trial thereof. same shall be there tried, under the rules and regulations applicable to the Superior Courts.

Sales of property under execution. § 4823. All sales of property, taken under execution by the Sheriff of said Court, or any Sheriff of a County, shall be conformable to the laws of the State regulating Sheriff's sales.

Judgments—when and where entered. § 4824. The party in whose favor a verdict shall be rendered, in said Court, shall be allowed to enter and sign judgment thereon, at any time within four days after the adjournment of the Court, at the Clerk's office, for the amount of such verdict and all legal costs; and no execution shall issue on such verdict until such judgment shall be entered by the party or his attorney.

Stay of execution sixty days. § 4825. Stay of execution, for sixty days, may be had in the same manner, and on the same terms, as are or may be allowed in the Superior Court.

Claim to real property. § 4826. Claims to real property, levied on under execution issuing from said Court, shall be returned to and tried in the Superior Court of the County where such real property may be situated; and such claims shall be put in, and tried, and determined, as in other cases of claim in such Superior Court. Claims to personal property, levied on under execution or attachment from said City Court, shall be returned and tried there in the same manner as claims to personal property in the Superior Court.

Bail—how sued out and served. § 4827. Bail may be required in cases originating in said Court, in the same manner and on the same terms as in cases of bail in the Superior Court; but with this proviso, that in any case about to be instituted in said Court, it shall be lawful and sufficient to serve the defendant with a process and copy of the affidavit, as in cases of bail pending the action; and whenever such process, with a copy of the affidavit annexed, and a copy or copies of such process and affidavit, shall be placed in the hands of the Sheriff of said Court, he shall arrest the defendant or defendants, and serve

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him or them with a copy or copies of said affidavit and process, and deal with him or them in the manner prescribed by the laws of the State in regard to bail; and the subsequent proceedings shall be as in other cases. In every bail case issued under the foregoing proviso, the plaintiff must file his declaration eight days before the return term of the process, or lose a term; and on failure to do so during such return term, the Court shall, on motion, order a non-suit.

§ 4828. All acts or parts of acts, already or hereafter passed, upon the subject of attachment and garnishment, or legislating as to any matter whatever in the Superior Courts of this State, shall apply to said City Court, as if named with the Superior Courts, so far as the nature of that tribunal will admit. Attach-
ments.

§ 4829. The Judge of said Court, or any Alderman of said city, or any Justice of the Peace, or Notary Public, may issue attachments returnable to said Court, and within the jurisdictional amount of the same; but such attachments must be issued at least ten days before they are returnable, and levied at least nine days before such return term; and no judgment shall be rendered in attachment until the term after the return term. By whom
issued.

Judgment
thereon.

§ 4830. Such attachments shall be directed to the Sheriff of the City Court of Savannah, and all and singular the Sheriffs and Constables of this State; and all prior and subsequent proceedings relative to such attachments, not herein expressly mentioned or specified, shall be governed by the laws of the State in relation to attachments, due regard being had to the nature of the different tribunals. To whom
directed.

§ 4831. The Sheriff of the City Court of Savannah may levy attachments returnable to said Court in any part of Chatham County. By whom
levied.

§ 4832. The declaration in attachment may be filed at any time during the return term of the attachment; but, on failure so to file it, the Court shall, on motion, dismiss the attachment. Declara-
tion—when
filed.

§ 4833. Said Courts shall have jurisdiction in all cases in garnishment, as well as when the debt of the garnishee to the defendant shall exceed as when it shall fall short of the jurisdictional amount of said Court; and in all cases of suit on bail or attachment, claim, or other obligations or bonds, given by parties to any proceedings issued from or had in said Court, although the penalties of said bonds may exceed the jurisdiction of said Court by being in double the sum sworn to, attached, or of the executions issued, or property levied on; *provided*, the original cause of action upon which such bonds or obligations were had or taken did not exceed the jurisdiction of said Court. Garnish-
ments—ju-
risdiction in
the Court of.

§ 4834. Garnishment proceedings in said Court shall be conformable to the law of the State on that subject; but the summons must be served on the garnishee, personally, ten days before the Court to which the garnishee is directed to appear; *provided*, Garnish-
ments—how
sued out,
served, and
returned.

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such garnishee shall reside in the County of Chatham, or not elsewhere in the State; but where the garnishee shall reside in any other County, then he shall be summoned and served, and shall make his return, and all other proceedings shall be had in the manner pointed out in the general law of the State for non-resident garnishees; with this proviso, however, that the summons must be returnable to the Superior Court of the County of the residence of such garnishee, and further proceedings be had in said Superior Court.

§ 4835. Any notice which may be required to be given in any attachment case in said Court, in order to make the judgment a lien on all the property of the defendant, or otherwise, may be served by the Sheriff of said Court, or any Constable of the city of Savannah; and plaintiffs in attachment may examine witnesses residing out of said city, in the same manner or under the same rules and regulations prescribed by the general law of the State.

§ 4836. In attachment cases in said Court, ten days' notice by *scire facias*, to make parties, shall be sufficient.

§ 4837. *Scire facias* to make parties in any cause in said Court shall be had as in the Superior Court; but such *scire facias* shall run throughout the State, and may be served by any Sheriff thereof; and service ten days before the return term thereof shall be valid and sufficient.

§ 4838. The general law of the State in regard to witnesses and their attendance, interrogatories, sets-off, affidavits of illegality, arbitration, and the examination of parties to suits by interrogatories, or under subpoena, and all other matters of a judicial nature, within the jurisdiction conferred on said City Court, shall be applicable to said City Court, respect being had to the nature of the different tribunals; but subpoenas shall be served by the Sheriff of said Court, or a Constable of said city, or a private person; and a commission to examine witnesses may issue on three days' notice to the opposite party, or his attorney.

§ 4839. The Judge of said Court shall have power to cause testimony to be taken *de bene esse*, in all cases pending in the same, according to the general law of the State, due regard being had to the nature of the tribunals; and the said Judge and other officers of said Court shall have, respectively, power to administer all oaths pertaining to their respective offices, as fully as the Judge and other officers of the Superior Court may in like cases do.

§ 4840. [The said Judge shall also have power to attest deeds and other papers, and administer affidavits in all cases in which, by existing laws, such papers may be attested, and affidavits administered by the Justices of the Peace of the County of Chatham.] (a)

§ 4841. All the duties and liabilities attached to the Superior and Inferior Courts, and to the Sheriffs of the Counties, shall be

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attached to the Clerk and Sheriff of said City Court; and the Judge of said Court is empowered to exercise the same authority over the Clerk and Sheriff, and other officers of said Court as is legally exercised by the Judges of the Superior Court over the Clerks of the Superior Court and Sheriffs of the Counties, and other officers amenable to them.

Judge, Clerk
and Sheriff—
respective
duties of.

§ 4842. Said Clerk and Sheriff of said City Court shall, respectively, take an oath similar to that prescribed for Clerks of the Superior and Inferior Courts, and for the Sheriffs of the Counties; and said oaths may be administered by the Judge of said City Court, or the Mayor or Clerk of the City Council of Savannah.

Oath of the
Clerk and
Sheriff.

§ 4843. Said Sheriff and Clerk of said City Court may sue and be sued in said Court; but when the Clerk may be defendant in any action, the process shall be signed by the Judge, and said Clerk shall, if required, copy the petition and annex the process thereto; and the Clerk shall also make out final process in any case in which he may be interested, as in other cases, which shall be signed by the Judge and executed as in other cases; and in all cases before said Court, in which the Sheriff shall be plaintiff or defendant, process shall be directed to the Marshal, and all and singular the Constables of the city of Savannah, and may be served by any one of them; and the proceedings thereon shall be as in other cases.

The Clerk
and Sheriff
may sue and
be sued in
said Court.

Process of
Sheriff—how
directed and
served.

§ 4844. The attorney's fee in each cause brought in said Court and in all attachment cases returnable to said Court, and actually put into the hands of an officer for service,) shall be five dollars, such fee to be taxed in the bill of costs. But, where the defendant shall prevail, the defendant's attorney shall be allowed a fee of two dollars, and three dollars shall, in every case, become immediately due to the city of Savannah, to be paid to the Clerk, and by him accounted for, and paid over in quarterly returns to the City Treasurer of Savannah. Every officer receiving an attachment, for service, shall immediately report the same to the said Clerk, who shall immediately collect the city fee from the attaching party, or his attorney; and if said Clerk shall fail to make any quarterly return and payment as aforesaid, he shall pay, for the use of said city, the penalty of five hundred dollars, to be enforced in said Court, by attachment against the Clerk for a contempt.

Attorney's
fee.

Cost in at-
tachment
cases.

§ 4845. In any case where it may be necessary to attach the Clerk of said Court, it shall be lawful for the Judge thereof to call in the services of the Clerk of the City Council of Savannah; and the Marshal of said city shall be competent to enforce any attachment by said Judge against the Sheriff thereof.

Attachment
against the
Clerk.

§ 4846. The Clerk of said Court shall copy into a book of record, to be provided by the Mayor and Aldermen of Savannah, all the proceedings in all the civil cases in said Court; which entry of record shall be made within twenty days after the determination of any cause; and the Clerks shall be allowed the same

Record of
proceedings
—by whom
kept.

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Minutes of Court. fees for that service, to be taxed in the bill of costs, as are allowed in the Superior Courts for similar service; and the said Clerk shall keep, from day to day, regular minutes of the proceedings of said Court, which shall be examined and signed by the Judge.

Jurors—how selected, etc. § 4847. All persons residing within the corporate limits of Savannah and liable to serve as jurors in the Superior Court of Chatham County shall be liable to serve as jurors in said City Court; and the Judge of said Court shall conform to the laws of this State pointing out the mode of selecting, drawing, and summoning jurors for the Superior Court, except as may be hereinafter mentioned; and the fines and other proceedings relative to non-attendance of jurors, or contempts by them committed, shall be in conformity with the general law; and the oaths to be administered to juries and witnesses in said City Court, upon the trial of civil causes, shall be the same as are by law to be administered to juries and witnesses in the Superior Courts.

Oaths of jurors and witnesses. How drawn. § 4848. The Judge of said City Court shall, previously to the adjournment of any regular or adjourned term thereof, draw, conformably to the laws of the State, twenty-three persons to serve on an inquest or Grand Jury for the said Court and city, and twenty-four persons for the trial of all civil and criminal cases of which said Court has jurisdiction; but no inquest or Grand Jury shall consist of less than eighteen persons, though twelve persons of any Grand Jury may find a bill or make a presentment; and the mode of proceeding and trial in all criminal cases in said Court shall be the same as in the Superior Courts of the State; and the oaths to be administered to jurors and witnesses in said City Court shall be the same as those administered to jurors and witnesses in criminal cases in the Superior Courts.

Grand Jury to consist of eighteen at least. Persons subject to jury duty. § 4849. It shall be the duty of the Clerk of said City Court, under the direction of the Judge thereof, at least once in every three years, beginning within six months after the promulgation of this Code, to make out a complete list, from the best sources to be determined by said Judge, of all persons liable to do jury duty in said Court; from which list the Judge shall select those most competent to do Grand and Special Jury duty, whose names shall be then placed by said Clerk on convenient slips of paper in the Grand Jury box; and the remaining persons shall do Petit Jury duty, and their names shall, in like manner, be deposited in the Petit Jury box.

Jury boxes and keys—by whom kept. § 4850. The jury boxes shall be kept by the Clerk, and the keys by the Sheriff; and no jury box shall, under any pretence, be opened but by the authority of the Judge.

Defaulting jurors—excuses of. § 4851. The Judge of said Court shall, in all cases, determine on the validity of the excuses of jurors; and he may, in any case, in term time or vacation, relieve a juror from payment of a fine, at any time before the same is paid over, if, in the discretion of said Judge, circumstances shall seem to warrant such remission.

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§ 4852. The Grand and Petit Jurors, in said Court, shall not be compelled to serve longer than one week, except when actually engaged in the trial of a case at the expiration of such week; but the Judge is authorized, hereby, to have summoned, instantler either by drawing from the jury boxes, or otherwise, any additional number of Grand and Petit Jurors that in his discretion he may deem necessary to perform the service demanded by the business before the Court.

Not compelled to serve longer than one week.

§ 4853. In all cases where, under execution or attachment process, returnable to said Court, horses, mules, or other live stock, may be levied upon, the Sheriff or other levying officer shall be allowed the amount of stabling or keeping necessary, according to the current rates actually expended by him; and, in all cases of levy, under process as aforesaid, horses, mules, hogs, or other live stock, or dry goods, groceries, or other property of a perishable nature, may be sold by order of the Judge of said Court, upon application to him, on oath, at such time and place as to him may seem most advantageous; *provided*, that not less than ten days' notice be given in a public gazette, and at the Court House in said city, of the time and place of sale; except in cases of fruit or other articles that would be greatly deteriorated by a delay of ten days.

Expenses of property levied on.

Property of a perishable nature may be sold by order.

§ 4854. When either party to a cause in said Court shall take exceptions to any proceedings in a suit, affecting the real merits of the same, it shall be the duty of the Judge to cause to be made and filed of record in said Court, a just and true statement of the facts relating thereto, and of all legal points arising therein; and the said party, after a full compliance with the law of the State regulating the granting of *certiorari*, may apply to the Judge of the Eastern District for a writ of *certiorari*, who shall grant the same, if he shall deem the exceptions taken to be sufficient; but no writ of *certiorari* shall issue after three months from the adjournment of the term at which the exceptions are taken.

Certiorari—how sued out, and proceedings thereon.

§ 4855. In any case where it may be necessary to have property levied on by the Sheriff of said Court guarded, said Sheriff may appoint and have sworn in, a special deputy for that purpose, and the Judge may allow a reasonable compensation in such case, and in any other case where the Sheriff may require assistance, and if any person shall oppose, resist, assault, or beat any special Sheriff in the discharge of his duty, such person shall, on conviction, be fined or imprisoned at the discretion of the Court.

Sheriff may appoint a Deputy—when.

§ 4856. [The Judge of said Court is authorized to appoint three bailiffs as officers of his Court, and, in cases of necessity, to appoint additional bailiffs, in his discretion.] (a)

Judge may appoint Bailiffs.

§ 4857. The Constables, and *ex officio* Constables, of the city of Savannah, from time to time, shall be Constables of said Court,

Article 11.—City Court of Savannah.

Constables
of said Court
—duties and
pay therefor.

so far as to authorize them to serve all process and orders of said Court to them directed, but the Judge of said Court is hereby empowered to select, in conjunction with the Mayor of said city, five members of the mounted or foot police of Savannah, as special bailiffs of said Court, who shall remain bailiffs, as aforesaid, for one year, unless removed as bailiffs by the Judge, or in case of dismissal or resignation from said police. It shall be the duty of three of said bailiffs to attend all sittings of said Court, subject to the orders of the Judge thereof, and they shall receive one dollar a day, whilst so attending, to be paid from the fines and forfeitures in said Court; said bailiffs being empowered to serve any criminal warrant within the jurisdictional limits of said Court (provided the warrant does not issue for an offense above the grade of misdemeanor), and, for purposes thereof, shall be considered lawful Constables of the State of Georgia, and receive the same fees as may be allowed by law to the Constables of this State; *provided*, nothing herein contained shall be construed to relieve such bailiffs from any other duties imposed by law, which shall not interfere with the duties above imposed.

Fees of Sheriff,
Deputy,
and Bailiffs.

§ 4858. [The Sheriff of said Court shall receive the sum of three dollars per day for his attendance during each session of said Court, and the deputy Sheriff and the bailiffs appointed under the provisions of Sections 4809 and 4856 of this Code, shall receive two dollars per day for their attendance during each session of said Court.] (a)

Summary
proceedings
before said
Court, in
cases speci-
fied.

§ 4859. Upon the petition of any ship-master, supercargo, owner, or consignee of any vessel, or of any articulated seaman, or any mariner or apprentice attached to a ship or vessel, who shall have any dispute or difference with any person, touching any contract, agreement, sale, promise, debt, or demand whatsoever, within the jurisdiction of said City Court, or who shall be charged with any assault, or assault and battery, trespass to the person, or other offense within the jurisdiction of said Court, committed anywhere within the County of Chatham, or where such ship-master, supercargo, owner, or consignee, or articulated seaman, or mariner, or apprentice, may prosecute for assault, or assault and battery, or trespass to the person, or other offense within the jurisdiction of said Court, committed anywhere in said County, or may be plaintiff in any such dispute or difference, touching any contract, agreement, sale, promise, debt, or demand whatsoever, within the jurisdiction of said Court, setting forth under oath, in such petition, the nature of his case, and that he can not, without great inconvenience and damage to him, await the determination of such matter in difference, or the trial of such charge, by the ordinary and usual mode of proceedings in the Courts in this State, shall be lawful for the Judge of said Court, and he is hereby

Article 11.—City Court of Savannah.

required and directed to order and appoint a special or extraordinary Court, to be held within forty-eight hours after the grant of such order, for the trial of any such cause, matter in difference, charge, or offense; and the said Judge shall, immediately, or within twenty-four hours after the granting of such order, draw the necessary jury or juries for the investigation and trial of such matter of dispute, civil or criminal, and such jury or juries shall be forthwith summoned to appear at the time and place appointed, and further proceedings shall be had, in a summary way, as may be agreeable to law, and as though said Court were in session at a regular term.

Special Court.

Jury—by whom and when drawn.

§ 4860. At the time and place which the said Judge shall appoint, the parties being duly notified by twelve hours' previous notice of such time and place, shall attend personally in any criminal case, and personally or by attorney in any civil case, before the said Judge, who shall then hear the parties, and shall in a summary way proceed to judge and determine such cause, and shall, forthwith, by the usual process of said Court, execute the judgment of said Court in such cause, unless exceptions to such judgment shall be taken by either party in a civil case on the pronouncing of such judgment, and if either party shall so except, or, in a criminal case, the defendant shall so except, it shall be his duty forthwith to apply to the Judge of the Superior Court of the Eastern District for a *certiorari*, founded on such exceptions, which, if allowed by the Judge of the said District, within twenty-four hours after the rendition of such judgment, shall be a supersedeas thereof; and in case of the absence of the Judge of said district, then reasonable time shall be allowed to the party making such exception to make such application, the said party giving good bond and security to the other party, to be approved of by the Judge of said City Court, conditioned to abide the final decision of the cause.

Twelve hours' notice of the time and place of hearing.

Trial.

Exceptions.

Certiorari.

Bond of applicant.

§ 4861. At such special or extraordinary Courts, the said Judge shall have full power to try each cause in which any captain or commander of a vessel, or articulated seaman, or mariner or apprentice attached to a ship or vessel, may be a party, in the most summary and speedy manner, and to compel the attendance of witnesses by the most summary process that can be devised, and no more delay shall occur in the trial of such causes than such as is indispensable to the due administration of justice; and the said Judge shall have power to enforce, by order and process, the bringing before him of any and all papers appertaining to such cause, wherever such papers may be, whether actually returned to another Court within the city of Savannah, or not so returned.

Jurisdiction and power of the Judge holding such Court.

Witnesses compelled to attend.

Production of papers.

§ 4862. The foregoing provisions in regard to special or extraordinary Courts, and writs of *certiorari* thereto, shall apply to all cases where any person or persons shall be charged and prosecuted for the offense of abducting, entertaining, secreting, lodg-

To what persons the foregoing proceedings apply.

Article 11.—City Court of Savannah.

ing, or concealing any articted seaman, or mariner, or apprentice, or suffering the same to be done, or aiding or assisting any articted seaman, or mariner, or apprentice, to desert his ship or vessel, or secretly carrying off any articted seaman, or mariner, or apprentice, from any such ship or vessel, or harboring, with intent to inveigle, entice, carry away, abduct, or secretly carry off, any articted seaman, or mariner, or apprentice, from a ship or vessel, or affording any conveyance or facility to such seaman, or mariner, or apprentice, to desert such ship or vessel, as defined in this Code, or in any law of this State, present or future, and not subjecting the offender to imprisonment in the penitentiary, whether such offense be committed in the jurisdictional limits of the city of Savannah, or within any part of the County of Chatham, upon the application to said Judge by the prosecutor in such case, or other person in interest, by petition, on oath, stating that he, or the witnesses, or some of them, necessary in carrying on said prosecution, can not, without great inconvenience and damage to him or them, await the trial of such charge or prosecution by the usual and ordinary course of proceedings in the Courts of the State.

§ 4863. The Sheriff and Clerk of said City Court, and all bailiffs thereof, shall attend such special or extraordinary Courts, and shall be entitled to the fees allowed by law for services therein; and in civil cases therein, the fee of three dollars, for use of the city, shall be paid by the plaintiff in each case, to be taxed in the bill of costs against the losing party.

The Clerk,
Sheriff, and
Bailiffs shall
attend.

§ 4864. For preventing vexatious arrests and fraudulent detention of articted seamen, or mariners, or apprentices, attached to a ship or vessel, it shall not be lawful for any keeper of a tavern or tippling house, or any other person, when an articted seaman, or mariner, or apprentice, as aforesaid, shall have been committed to jail by his captain, or the owner or consignee of his vessel, to lodge a detainer under the pretence of civil process founded on debt or civil contract; but in any such case, when any articted seaman, or mariner, or apprentice, as aforesaid, shall have been so committed to jail, it shall be the duty of the Jailor to surrender such seaman, or mariner, or apprentice, as aforesaid, upon the requisition of the owner, captain, or consignee, committing him, notwithstanding any detainer which may be or have been lodged against such seaman, or mariner, or apprentice, founded on civil process; and upon failure of such Jailor, within the limits of Savannah, to make such surrender, the same may be enforced by summary order of the Judge of said City Court, directed to the Sheriff and Constables of said Court.

Vexatious
arrests.

§ 4865. It shall not be lawful for any Sheriff, Constable, or other officer, to arrest any articted seaman, or mariner, or apprentice, attached to any ship or vessel, on civil process, within twenty-four hours next immediately before the time which shall have been de-

Arrest of
persons un-
der civil
process.

Article 11.—City Court of Savannah.

signated by advertisement for the sailing of such vessel, or after the lapse of such time, if such vessel shall have been detained beyond that time by adverse wind or other cause; and in case of any such arrest within such time, anywhere within the limits of Chatham County, the Judge of said City Court shall have power and authority to discharge such seaman, or mariner, or apprentice, instantly, on the application of the captain, owner, or consignee, showing that such arrest was made within the time prohibited; and the officer making such arrest shall be punishable by indictment in said Court, and, on conviction, shall be fined in a sum not exceeding one hundred dollars.

§4866. If any articted seaman, mariner, or apprentice, as aforesaid, shall be arrested under civil or criminal process issued by any Justice of the Peace or Justice of the Inferior Court, for any matter, cause, or thing, within the jurisdiction of the said City Court, or offense committed anywhere in the County of Chatham, whether hereinbefore specified or not, the captain, owner, or consignee, of the vessel to which such seaman shall be under articles at the time of such arrest, or to which such mariner or apprentice may belong, shall be entitled to apply to said Judge for a summary hearing, as hereinbefore provided for other summary hearings before said Court; and the said Judge shall have full power and authority to take jurisdiction and cognizance of such cause, and finally decide the same, as in the said other cases of summary hearing; and it shall be the duty of the officer making such arrest, and of the Justice from whom the process emanated, on the requisition of the said Judge, to transmit to the said Judge all documents and papers in relation thereto; and the same proceedings in regard to *certiorari* shall be had as are applicable to other trials before such special or extraordinary Courts.

Defendant
may have
a summary
hearing.

Arresting
officer and
magistrate
shall turn
over papers.

§4867. Whenever, after any order shall have been granted by said Judge, appointing a special or extraordinary term of said Court, for the trial of any criminal offense therein cognizable, and application may be made to the said Judge by the prosecuting officer of the said Court, or by the defendant or defendants, or parties charged with such offense, or his or their counsel (such application, if made by the parties themselves, to be verified by affidavit), setting forth that a material witness or witnesses for the applicant is or are about to leave the city of Savannah, and on that account, or from imminent sickness, or other cause, will not, in reasonable probability, be able to be present at the trial of the cause in which his or their testimony is needed, it shall be the duty of the said Judge forthwith to order process of subpoena to issue, requiring said witness or witnesses to appear in person before him, at a certain place and time (of which time and place the said prosecuting officer, and the said defendant or defendants, or parties charged, shall have at least twelve hours' notice), to give testimony in the said cause; at which time and place the said

Witnesses
may be ex-
amined be-
fore the trial
—when.

Article 11.—City Court of Savannah.

Judge shall take down in writing the answers of the said witness or witnesses, given under oath, to the question or questions to be propounded to him or them, touching the said cause, on examination and cross-examination, by the parties respectively, or their counsel; such examination to be made and testimony to be received in accordance with the usual practice in Courts of Justice and with the rules of evidence; which said answers, when so taken and committed to writing, shall be sealed up, appropriately indorsed and certified under the hand of said Judge, and shall remain in the office of the Clerk of said Court for the benefit of both parties, and may be read as evidence upon the trial of the cause in or with reference to which the said testimony may have been taken, as aforesaid; *provided*, the said witness or witnesses shall not be personally present to testify in such cause at said trial, and not otherwise.

Answers
may be used
by other
party.

Appeal not
allowed.

§ 4868. No appeal to a special jury shall be allowable in any case before any special or extraordinary session of said Court.

Salary of So-
licitor Gene-
ral.

§ 4869. In consideration of the additional labor imposed upon the Solicitor General of the Eastern District, in appearing and prosecuting criminal causes at the regular and special terms of said Court, he shall have and receive, in addition to the fees allowed by law, the sum of five hundred dollars per annum, payable in quarterly installments from the fines and forfeitures in said Court; but, in case of the absence of the Solicitor General, such fees shall be paid to the Solicitor General *pro tempore*; and the fees of the Solicitor General shall in all cases be the same as are allowed by law in the Superior Courts.

Money arising
from
fines.

Officers
bringing
money into
Court.

§ 4870. Moneys arising from jury fines, and fines imposed for violation of the penal laws, and collected from forfeited recognizances in said Court, shall be subject to the payment of the fees of the Solicitor General, and the Clerk, and Sheriff, and other officers of said Court in criminal cases; and the Solicitor General, Clerk, and Sheriff, and other officers bringing the money into Court, shall be entitled to have their insolvent bills paid first, and then the bills of former Solicitors, Clerks, and Sheriffs, and other officers shall be paid according to priority; but no bill remaining unpaid for a longer time than four years shall take any part of said fund.

Justice of
the Peace—
his power.

§ 4871. It shall be the duty of the Justices of the Peace, and other persons exercising the powers of Magistrates within the city of Savannah, to commit or place under bonds all persons charged with misdemeanors committed within the jurisdictional limits of the city of Savannah, or elsewhere, and within the special jurisdiction of said City Court, for trial before the City Court of Savannah, instead of the Superior Court; and if any such case be returned to the Superior Court, the Judge thereof is hereby empowered to order said case transferred for trial to said City Court; and all bonds and other papers forming said record shall be deemed

Article 11.—City Court of Savannah.

and considered as valid and binding as if returned in the first instance to said City Court; and it shall be the duty of the Solicitor General to prosecute all such cases in the said City Court; and in all such cases of misdemeanor, returned to the Superior instead of said City Court, the Magistrate so returning the same shall forfeit all costs and charges in the same; and such Magistrate, so acting, may besides be attached and punished as for contempt in said Superior or City Court.

§ 4872. All peace warrants and bonds to keep the peace taken in Chatham County shall be returned immediately to the Solicitor General of the Eastern District, or, in his absence from said County, to the Clerk's office of the said City Court of Savannah, and also all warrants and bonds for offenses conizable by said City Court; and said Solicitor General shall, at every term of said City Court, lay such warrants and bonds before the Judge thereof, who may then examine into any such case; and if it shall appear to him in any case, from the papers or other evidence to be presented by the prosecution, that there is no real ground for such warrant or bond, or commitment under such warrant, or that the security required is too large or too small, then he may annul such warrants, cancel such bond, relieve from such commitment, order less or more security, and compel the prosecutor to pay all costs and expenses, as in his discretion may seem proper; and such Judge may, in any such case, and other cases of prosecution before said Court, where it shall appear to him that corruption or gross oppression has been practiced by any Justice of the Peace in said County, compel such Justice to pay all the costs, and jail fees, and other expenses in such case; and he shall cause such Justice to be bound over to the Superior Court, to answer for such malpractice.

§ 4873. For every verdict rendered in a civil cause in said Court, the jury fees shall be one dollar, to be paid by the party taking such verdict. And in every case where the plaintiff may be liable for costs, and resides beyond the civil jurisdictional limits of said Court, judgment for such costs may be entered up against the plaintiff's attorney of record.

§ 4874. Except where otherwise expressly provided in this Code, the costs to be allowed the Clerk and Sheriff, and other officers of said Court, shall be the same as those allowed for similar services in the Superior Court of Chatham County; and the provisions of this section shall apply as well to special as to regular terms of said Court.

§ 4875. The laws of the State in relation to insolvent debtors and their discharge shall apply to said Court, where any person may be arrested by process issuing out of it; but all suggestions of fraud in said Court must be tried by a jury.

§ 4876. Where the balance due a defendant shall exceed the jurisdiction of the Court, defendant may have judgement to the

Peace war-
rants and
bonds.

Jury fees.

Attorney li-
able for costs
—when.

Clerk and
Sheriff fees.

Insolvent
debtors and
their dis-
charge.

Balance due
defendant.

Article 11.—City Court of Savannah.

extent of the jurisdiction, and may afterward sue for the amount of excess beyond the sum so by him recovered.

Rules of practice.

§ 4877. The Judge of said Court may make rules of practice for the same, not in conflict with the general laws of the State; and, in all cases of fees to officers where such general laws do not strictly apply, he may, by rule or order of Court, fix such fees by analogy to the general law.

Continuances.

§ 4878. Continuances in said Court shall be regulated by the general law applicable to other Courts of Record of the State.

Jailor—his duties specified.

§ 4879. The keeper of the common jail in Chatham County shall, at every regular term of said City Court, return to the Judge thereof a jail calendar, containing the name of every white prisoner therein, the time and cause of commitment, the name of the committing Magistrate or Magistrates, and the place where the alleged offense, or other cause of detention, may have occurred; and if, in any case, it shall appear to him that there is no good cause for the imprisonment, he may discharge such prisoner on such terms as such Judge may order; but such Judge shall have no power to discharge any person committed for contempt of a Court of Record, or by authority of the United States, or any person regularly committed on charge of a capital offense.

Sheriff's statement to Judge.

§ 4880. The Sheriff of said City Court shall, at the opening of every regular term, hand to the Judge a just and true statement of all moneys received by said Sheriff from fines and forfeited recognizances, the amount paid out by him, and the account on which the same was paid, together with a statement of the balance on hand; and the Judge may order any balance paid into the registry of Court, or deposited in some safe place of keeping, subject to the future order of the Court.

Sentence and punishment.

§ 4881. Whenever, in any case, the said Court shall be authorized to sentence a person to imprisonment, such imprisonment may, as part of the sentence of the Court, be in any work-house established by the city authorities of Savannah; and the Judge may sentence such prisoner to work in such place, or to work on the streets of Savannah, under the direction of the city authorities.

ARTICLE XII.

JUSTICES OF THE PEACE AND JUSTICES' COURTS.

SECTION.

- 4882. Civil jurisdiction.
- 4883. Judgment first term.
- 4884. Plaintiff and defend't may besworn.
- 4885. Prosecutions *vs.* persons of color.

SECTION.

- 4886. Bail.
- 4887. Special jurisdiction.
- 4888. Costs—by whom paid.
- 4889. Provisions as to repeal.

Civil jurisdiction.

§ 4882. The civil jurisdiction of each of the Justices of the Peace, for the first, second, third, and fourth districts, shall extend

Article 12.—Justices of the Peace and Justices' Courts.

over the whole of said districts, and two miles from the corporate limits of the city of Savannah, as established by law; and each of the Justices for the aforesaid districts may take cognizance of, award judgment, and issue process of execution, in all cases of debt or contract not exceeding the amount of a Justice's jurisdiction, where the defendant may reside in any of said districts, in the same manner as if the defendant resided in the district of the Justice issuing such process; [and it shall be lawful for such Justices to hold their offices and Courts in any part of said city.] (a)

§ 4883. In every suit brought in any of the Justices' Courts in said districts, judgment shall be rendered at the first term, unless the defendant shall enter an appearance and file a plea in writing; and whenever the defendant shall enter such appearance and file such plea at the first term, the case shall be placed on the jury docket, and tried by a jury at the succeeding term, unless good cause be shown for a continuance.

Judgment
first term.

Otherwise
if a plea be
filed.

§ 4884. In every case before any of the Justices' Courts for said districts, in which the plaintiff shall be admitted to prove his own account by his own oath, it shall be lawful for the defendant to be sworn and give his testimony in defense, upon making affidavit that he has no other testimony which it is in his power to procure to disprove the justice of the account; and the defendant may always prove his set-off by his own oath in every case where the plaintiff might prove a similar demand by his oath.

Plaintiff and
defendant
may both
be sworn—
when.

§ 4885. Whenever a prosecution shall be entered against a person of color, for an offense not punishable with death, within the limits of any of the aforesaid districts, it shall be the duty of the Magistrate before whom such prosecution is instituted, within forty-eight hours after the filing of the affidavit, to draw from the jury box of his district the names of seven persons, any five of whom shall constitute a jury to try said person of color; and if the jury shall return a verdict of not guilty, then the person of color shall be discharged; and if the jury shall find a verdict of guilty, then, and in that case, the Magistrate shall proceed to pronounce the sentence, having regard in his sentence to any recommendation which the jury may make as to the mode or extent of punishment.

Prosecution
against free
persons of
color.

§ 4886. In every such case of prosecution, the person of color shall be admitted to bail by the Magistrate, at any time before conviction, or after conviction, where a *certiorari* is applied for, upon good security in a reasonable sum being tendered to the Magistrate, for the appearance of such person of color to abide the final decision of the cause.*

Bail.

§ 4887. All civil complaints, or suits, or matters in dispute or difference, which, by the provisions of this Code applicable to the City

Special ju-
risdiction of
Justice.

(a) Acts of 1863-4, p. 91.

* Is not this repealed by Act of 1866, Acts of 1865-6, p. 239?

Article 12.—Justices of the Peace and Justices' Courts.

Court of Savannah, would (if the amount in dispute or difference were within the jurisdiction of said Court) authorize the Judge of said City Court to hold special or extraordinary Courts for the trial thereof, the amount whereof shall not, in any one case, exceed the jurisdiction of a Justice of the Peace, may be tried by any Justice of the Peace for that part of the County of Chatham embraced within the corporate limits of the city of Savannah, or within the said first, second, third, and fourth districts, under the same restrictions as to petition, notice, affidavit, and other modes of procedure, set forth in said provisions, as far as such modes of procedure may be made to conform to the proceedings in Justices' Courts, and all and every process issued by any Justice of the Peace, by authority hereof, shall be served by any lawful Constable of any of said districts, and every such case shall be determined by a jury of five, to be drawn instantan from the jury-box of said Magistrate, which jury shall be summoned to appear for the trial of said action, or matter in dispute, or difference, within forty-eight hours from the time of issuing the process, and the costs shall be the same as in other trials in Magistrates' Courts.

Costs—by
whom paid.

§ 4888. No person who may be discharged by a Magistrate or Magistrates of any of said districts, for want of sufficient cause of commitment, shall ever be compelled to pay any part of the costs of prosecution or examination.

How this
Code for Sa-
vannah shall
be repealed.

§ 4889. No Code or system of laws which may be passed by the General Assembly at its present or any adjourned session, shall be construed to repeal or modify any of the provisions of this Act, unless such provisions shall be specially named or referred to; and all banking, commercial, religious, charitable, literary, military, and other charters and incorporations, and privileges, and exemptions, good and valid in law, and existing or operative in the city of Savannah and County of Chatham at the time of passing any such Code or system, and not expressly superseded thereby, are hereby expressly saved and confirmed, and the terms and provisions of this Act, shall be construed as though they were part and parcel of such Code or system of laws, in case such Code or system shall be passed as aforesaid.

Article 1.—Declaration of Rights.

CONSTITUTION OF THE STATE OF GEORGIA,

AS AMENDED BY THE STATE CONVENTION AT MILLEDGEVILLE, ON THE 7TH DAY OF NOVEMBER, 1865.

P R E A M B L E.

We, the people of the State of Georgia, in order to form a permanent Government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this Constitution for the State of Georgia.

Preamble.

ARTICLE 1.—*Declaration of Rights.*

ARTICLE 2.—*Legislative Department.*

ARTICLE 3.—*Executive Department.*

ARTICLE 4.—*Judicial Department.*

ARTICLE 5.—*Miscellaneous Provisions.*

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION.

- 4890. Duty of Government.
- 4891. Life, liberty, and property.
- 4892. Habeas corpus.
- 4893. Arms—right to keep.
- 4894. No religious test.
- 4895. Freedom of speech.
- 4896. Appeal and petition.
- 4897. Persons charged with crime.
- 4898. Life or liberty—jeopardized.
- 4899. Corruption of blood.
- 4900. Excessive bail.

SECTION.

- 4901. Power of the Courts.
- 4902. Legislative Acts.
- 4903. Ex post facto laws.
- 4904. Laws should be general.
- 4905. Power of taxation.
- 4906. Private ways.
- 4907. Unreasonable searches.
- 4908. Persons not to be imprisoned.
- 4909. Slavery prohibited.
- 4910. Enumeration of rights.

§ 4890. 1. Protection to person and property is the duty of government. Protection.

§ 4891. 2. No person shall be deprived of life, liberty, or property, except by due process of law. Life, liberty and property

§ 4892. 3. The writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety may require it. Habeas corpus.

Article 1.—Declaration of Rights.

Arms. §4893. 4. A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Religious test. §4894. 5. Perfect freedom of religious sentiment, be and the same is hereby secured, and no inhabitant of said State shall ever be molested in person or property, nor prohibited from holding any public office or trust on account of his religious opinions.

Freedom of speech and the press. §4895. 6. Freedom of speech, and freedom of the press, are inherent elements of political liberty. But while every citizen may freely speak or write, or print on any subject, he shall be responsible for the abuse of the liberty.

Right of the people. §4896. 7. The right of the people to appeal to the Courts, to petition government on all matters of legitimate cognizance, and peaceably to assemble for the consideration of any matter of public concern, shall never be impaired.

Benefit of counsel. §4897. 8. Every person charged with an offense against the laws of the State, shall have the privilege and benefit of counsel; shall be furnished, on demand, with a copy of the accusation, and a list of the witnesses on whose testimony the charge against him is founded; shall have compulsory process to obtain the attendance of his own witnesses; shall be confronted with the witnesses testifying against him, and shall have a public and speedy trial by an impartial jury, as heretofore practiced in Georgia.

Jeopardy of life, etc. §4898. 9. No person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for a new trial after conviction, or in case of mistrial.

Corruption of blood. §4899. 10. No conviction shall work corruption of blood or general forfeiture of estate.

Bail. §4900. 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

§4901. 12. The power of the Courts to punish for contempts shall be limited by legislative acts.

Legislative acts. §4902. 13. Legislative acts in violation of the Constitution are void, and the Judiciary shall so declare them.

Ex post facto laws. §4903. 14. Ex post facto laws, laws impairing the obligation of contracts, and retroactive laws injuriously affecting any right of the citizen, are prohibited.

Laws shall be general. §4904. 15. Laws should have a general operation, and no general law affecting private rights shall be varied in a particular case by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person being under a legal disability to contract, is capable of such free consent.

Power of taxation. §4905. 16. The power of taxation over the whole State shall be exercised by the General Assembly only to raise revenue for the support of government, to pay the public debt, to provide for the common defense, and for such other purposes as the General Assembly may be specially required or empowered to accomplish by this Constitution. But the General Assembly may, by statute,

Article 1.—Declaration of Rights.

grant the power of taxation for designated purposes, with such limitations as they may deem expedient, to County authorities and municipal corporations, to be exercised within their several territorial limits.

§ 4906. 17. In cases of necessity, private ways may be granted upon just compensation being first paid; and, with this exception, private property shall not be taken, save for public use, and then only on just compensation to be first provided and paid, unless there be a pressing, unforeseen necessity; in which event the General Assembly shall make early provision for such compensation.

Private ways.

§ 4907. 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place or places to be searched, and the persons and things to be seized.

Unreasonable searches

§ 4908. 19. The person of a debtor shall not be detained in prison, after delivery, for the benefit of his creditors, of all his estate not expressly exempted by law from levy and sale.

Person of a debtor.

§ 4909. 20. The Government of the United States having, as a war measure, proclaimed all slaves held or owned in this State, emancipated from slavery, and having carried that proclamation into full practical effect, there shall henceforth be, within the State of Georgia, neither slavery nor involuntary servitude, save as a punishment for crime, after legal conviction thereof; *provided*, this acquiescence in the action of the Government of the United States is not intended to operate as a relinquishment, waiver, or estoppel of such claim for compensation of loss sustained by reason of the emancipation of his slaves, as any citizen of Georgia may hereafter make upon the justice and magnanimity of that Government.

Slavery abolished.

§ 4910. 21. The enumeration of rights herein contained is a part of this Constitution, but shall not be construed to deny to the people any inherent rights which they have hitherto enjoyed.

Enumeration of rights

ARTICLE II.

LEGISLATIVE DEPARTMENT.

SECTION I.

SECTION.

- 4911. Departments of Government.
- 4912. Legislative power,
- 4913. Meeting of General Assembly.

SECTION.

- 4914. Disqualification of members.
- 4915. Persons convicted of felony.
- 4916. Persons holding public money.

§ 4911. 1. The Legislative, Executive, and Judicial Departments shall be distinct, and each department shall be confided to

Departments of government.

Article 2.—Legislative Department.

a separate body of magistracy. No person, or collection of persons, being of one department, shall exercise any power properly attached to either of the others, except in cases herein expressly provided.

Legislative
power.

§ 4912. 2. The Legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, the members whereof shall be elected, and returns of the election made, in the manner now prescribed by law (until changed by the General Assembly), on the 15th day of November, in the present year, and biennially thereafter, on the first Wednesday of October, to serve until their successors shall be elected; but the General Assembly may, by law, change the day of election.

Meeting of
the Legisla-
ture.

§ 4913. 3. The first meeting of the General Assembly, under this Constitution, shall be on the first Monday in December next, after which it shall meet annually on the first Thursday in November, or on such other day as the General Assembly may prescribe. A majority of each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of its absent members, as each House may provide. No session of the General Assembly, after the first above mentioned, shall continue longer than forty days, unless prolonged by a vote of two-thirds of each branch thereof.

Disqualifi-
cation of
members.

§ 4914. 4. No person holding any military commission, or other appointment, having any emolument or compensation annexed thereto, under this State, or the United States, or either of them (except Justices of the Inferior Court, Justices of the Peace, and officers of the militia), nor any defaulter for public money, or for any legal taxes required of him, shall have a seat in either branch of the General Assembly; nor shall any Senator or Representative, after his qualification as such, be elected by the General Assembly, or appointed by the Governor, with the advice and consent of two-thirds of the Senate, to any office or appointment, having any emolument or compensation annexed thereto, during the time for which he shall have been elected.

Unpardon-
ed felons in-
eligible.

§ 4915. 5. No person convicted of any felony before any Court of this State, or of the United States, shall be eligible to any office, or appointment of honor, profit, or trust, within this State, until he shall have been pardoned.

Holders of
public mo-
ney.

§ 4916. 6. No person who is a collector or holder of public money, shall be eligible to any office in this State, until the same is accounted for and paid into the treasury.

SECTION II.

SECTION.

4917. Senatorial Districts.

4918. Qualifications of Senators.

SECTION.

4919. The President.

4920. Sole power of impeachment.

Article 2.—Legislative Department.

§ 4917. 1. There shall be forty-four Senatorial Districts in the State of Georgia, each composed of three contiguous Counties, from each of which Districts one Senator shall be chosen, until otherwise arranged, as hereinafter provided. Senatorial Districts.

The said Districts shall be constituted of Counties as follows :

The First District of Chatham, Bryan, and Effingham.
 The Second District of Liberty, Tatnall, and McIntosh.
 The Third District of Wayne, Pierce, and Appling.
 The Fourth District of Glynn, Camden, and Charlton.
 The Fifth District of Coffee, Ware, and Clinch.
 The Sixth District of Echols, Lowndes, and Berrien.
 The Seventh District of Brooks, Thomas, and Colquitt.
 The Eighth District of Decatur, Mitchell, and Miller.
 The Ninth District of Early, Calhoun, and Baker.
 The Tenth District of Dougherty, Lee, and Worth.
 The Eleventh District of Clay, Randolph, and Terrell.
 The Twelfth District of Stewart, Webster, and Quitman.
 The Thirteenth District of Sumter, Schley, and Macon.
 The Fourteenth District of Dooly, Wilcox, and Pulaski.
 The Fifteenth District of Montgomery, Telfair, and Irwin.
 The Sixteenth District of Laurens, Johnson, and Emanuel.
 The Seventeenth District of Bullock, Scriven, and Burke.
 The Eighteenth District of Richmond, Glasscock, and Jefferson.
 The Nineteenth District of Taliaferro, Warren, and Greene.
 The Twentieth District of Baldwin, Hancock, and Washington.
 The Twenty-First District of Twiggs, Wilkinson, and Jones.
 The Twenty-Second District of Bibb, Monroe, and Pike.
 The Twenty-Third District of Houston, Crawford, and Taylor.
 The Twenty-Fourth District of Marion, Chattahoochee, and Muscogee.
 The Twenty-Fifth District of Harris, Upson, and Talbot.
 The Twenty-Sixth District of Spalding, Butts, and Fayette.
 The Twenty-Seventh District of Newton, Walton, and Clark.
 The Twenty-Eighth District of Jasper, Putnam, and Morgan.
 The Twenty-Ninth District of Wilkes, Lincoln, and Columbia.
 The Thirtieth District of Oglethorpe, Madison, and Elbert.
 The Thirty-First District of Hart, Franklin, and Habersham.
 The Thirty-Second District of White, Lumpkin, and Dawson.
 The Thirty-Third District of Hall, Banks, and Jackson.
 The Thirty-Fourth District of Gwinnett, DeKalb, and Henry.
 The Thirty-Fifth District of Clayton, Fulton, and Cobb.
 The Thirty-Sixth District of Meriwether, Coweta, and Campbell.
 The Thirty-Seventh District of Troup, Heard, and Carroll.
 The Thirty-Eighth District of Haralson, Polk, and Paulding.
 The Thirty-Ninth District of Cherokee, Milton, and Forsyth.
 The Fortieth District of Union, Towns, and Rabun.
 The Forty-First District of Fannin, Gilmer, and Pickens.
 The Forty-Second District of Bartow, Floyd, and Chattooga.
 The Forty-Third District of Murray, Whitfield, and Gordon.
 The Forty-Fourth District of Walker, Dade, and Catoosa.

If a new County be established, it shall be added to a District which it adjoins. The Senatorial Districts may be changed by the General Assembly, but only at the first session after the taking of each new census by the United States Government, and their number shall never be increased. If new Counties be created.

§ 4918. 2. No person shall be a Senator who shall not have attained to the age of twenty-five years and be a citizen of the United States, and have been for three years an inhabitant of this State, and for one year a resident of the District from which he is chosen. Qualification of Senators.

Article 2.—Legislative Department.

§ 4919. 3. The presiding officer shall be styled the President of the Senate, and shall be elected *viva voce* from their own body.

§ 4920. 4. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, profit, or trust, within this State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION III.

SECTION.

4921. House of Representatives.

4922. Qualification of members.

4923. Speaker of the House.

SECTION.

4924. Power of impeachment.

4925. Bills for raising revenue.

§ 4921. 1. The House of Representatives shall be composed as follows: The thirty-seven Counties having the largest representative population shall have two Representatives each; every other county shall have one Representative. The designation of the Counties having two Representatives shall be made by the General Assembly immediately after the taking of each census.

§ 4922. 2. No person shall be a Representative who shall not have attained to the age of twenty-one years, and be a citizen of the United States, and have been for three years an inhabitant of this State, and for one year a resident of the County which he represents.

§ 4923. 3. The presiding officer of the House of Representatives shall be styled the Speaker, and shall be elected *viva voce* from their own body.

§ 4924. 4. They shall have the sole power to impeach all persons who have been or may be in office.

§ 4925. 5. All bills for raising revenue or appropriating money, shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.

SECTION IV.

SECTION.

4926. Election and return of members.

4927. May punish for contempts.

4928. Members free from arrest.

4929. Journal of each House.

4930. Passing bills.

SECTION.

4931. Acts shall be signed.

4932. Adjournments.

4933. Oath of members.

4934. Yeas and nays.

§ 4926. 1. Each House shall be the judge of the election re-

Article 2.—Legislative Department.

turns and qualifications of its own members, and shall have power to punish them for disorderly behavior or misconduct, by censure, fine, imprisonment, or expulsion, but no member shall be expelled except by a vote of two-thirds of the House from which he is expelled.

Election
and returns.

§ 4927. 2. Each House may punish, by imprisonment not extending beyond the session, any person not a member, who shall be guilty of a contempt by any disorderly behavior in its presence; or who, during the session, shall threaten injury to the person or estate of any member, for any thing said or done in either House; or who shall assault any member therefor; or who shall assault or arrest any witness going to or returning therefrom; or who shall rescue, or attempt to rescue, any person arrested by order of either House.

Each House
may punish
offenders.

§ 4928. 3. The members of both Houses shall be free from arrest during their attendance on the General Assembly, and in going to and returning therefrom, except for treason, felony, or breach of the peace. And no member shall be liable to answer in any other place, for any thing spoken in debate in either House.

Exempt
from arrest.

§ 4929. 4. Each House shall keep a journal of its proceedings, and publish them immediately after its adjournment. The yeas and nays of the members on any question, shall, at the desire of one-fifth of the members present, be entered on the journals. The original journals shall be preserved (after publication) in the office of the Secretary of State, but there shall be no other record thereof.

Each House
shall keep a
journal.

§ 4930. 5. Every bill, before it shall pass, shall be read three times, and on three separate and distinct days, in each House, unless in cases of actual invasion or insurrection. Nor shall any law or ordinance pass which refers to more than one subject-matter, or contains matter different from what is expressed in the title thereof.

Passing
bills.

§ 4931. 6. All acts shall be signed by the President of the Senate and the Speaker of the House of Representatives, and no bill, ordinance, or resolution, intended to have the effect of law, which shall have been rejected by either House, shall be again proposed under the same or any other title, without the consent of two-thirds of the House by which the same was rejected.

Acts—by
whom sign-
ed.

§ 4932. 7. Neither House shall adjourn for more than three days, nor to any other place, without the consent of the other, and in case of disagreement between the two Houses, on a question of adjournment, the Governor may adjourn them.

Adjourn-
ments.

§ 4933. 8. Every Senator and Representative, before taking his seat, shall take an oath or affirmation to support the Constitution of the United States and of this State, and also that he hath not practiced any unlawful means, either directly or indirectly, to procure his election. And every person convicted of having given

Oath of Sen-
ators and
Representa-
tives.

Article 2.—Legislative Department.

or offered a bribe, shall be disqualified from serving as a member of either House for the term for which he was elected.

§ 4934. 9. Whenever this Constitution requires an act to be passed by two-thirds of both Houses, the yeas and nays on the passage thereof, shall be entered on the journals of each.

SECTION V.

SECTION.

4935. Powers of the General Assembly.

4936. New Counties—changing lines.

4937. Promotion of learning.

SECTION.

4938. Grant pardons.

4939. Free persons of color.

§ 4935. 1. The General Assembly shall have power to make all laws and ordinances consistent with this Constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State.

§ 4936. 2. They may alter the boundaries of Counties, and lay off and establish new Counties, but every bill to establish a new County shall be passed by at least two-thirds of the members present, in each branch of the General Assembly.

§ 4937. 3. The General Assembly shall have power to appropriate money for the promotion of learning and science, and to provide for the education of the people, and shall provide for the early resumption of the regular exercises of the University of Georgia, by the adequate endowment of the same.

§ 4938. 4. The General Assembly shall have power, by a vote of two-thirds of each branch, to grant pardons in cases of final conviction for treason, and to pardon or commute after final conviction in capital cases.

§ 4939. 5. It shall be the duty of the General Assembly at its next session, and thereafter as the public welfare may require, to provide by law for the government of free persons of color, for the protection and security of their persons and property, guarding them and the State against any evil that may arise from their sudden emancipation, and prescribing in what cases their testimony shall be admitted in the Courts; for the regulation of their transactions with citizens; for the legalizing of their existing, and the contracting and solemnization of their future marital relations, and connected therewith their rights of inheritance and testamentary capacity; and for the regulation or prohibition of their immigration into this State from other States of the Union, or elsewhere. And further, it shall be the duty of the General Assembly to confer jurisdiction upon Courts now existing, or to create County Courts with jurisdiction in criminal cases excepted from the exclusive jurisdiction of the Superior Court, and in civil cases whereto free persons of color may be parties.

Article 2.—Legislative Department.

SECTION VI.

SECTION.

4940. Restriction of powers.

4941. Money—how drawn.

SECTION.

4942. Donations—how made.

4943. Stockholders.

§ 4940. 1. The General Assembly shall have no power to grant corporate powers and privileges to private companies, except to banking, insurance, railroad, canal, plank road, navigation, mining, express, lumber, manufacturing, and telegraph companies; nor to make or change election precincts; nor to establish bridges and ferries; nor to change names, or legitimate children; but shall, by law, prescribe the manner in which such power shall be exercised by the Courts. But no bank charter shall be granted or extended, and no act passed, authorizing the suspension of specie payment by any chartered bank, except by a vote of two-thirds of each branch of the General Assembly.

Corporations—how and in what cases granted.

§ 4941. 2. No money shall be drawn from the Treasury of this State, except by appropriation made by law; and a regular statement and account of the receipt and expenditure of all public money shall be published from time to time.

Money—how drawn from the Treasury.

§ 4942. 3. No vote, resolution, law, or order, shall pass, granting a donation or gratuity in favor of any person, except by the concurrence of two-thirds of the General Assembly.

Donations.

§ 4943. 4. No law shall be passed by which a citizen shall be compelled, directly or indirectly, to become a stockholder in, or contribute to a railroad, or other work of internal improvement, without his consent, except the inhabitants of a corporate town or city. This provision shall not be construed to deny the power of taxation for the purpose of making levees or dams to prevent the overflow of rivers.

Citizens not compelled to contribute to railroad companies, etc.

ARTICLE III.

EXECUTIVE DEPARTMENT.

SECTION I.

SECTION.

4944. Executive powers.

4945. Governor—how elected.

4946. Qualification of Governor.

SECTION.

4947. Death, resignation, or disability.

4948. Oath of Governor.

§ 4944. 1. The Executive power shall be vested in a Governor, the first of whom, under this Constitution, shall hold the office from the time of his inauguration, as by law provided, until the election and qualification of his successor. Each Governor subsequently elected shall hold the office for two years, and until his successor shall be elected and qualified, and shall not be eligible

Executive power.

Article 3.—Executive Department.

to re-election, after the expiration of a second term, for the period of four years. He shall have a competent salary, which shall not be increased nor diminished during the time for which he shall have been elected; neither shall he receive, within that time, any other emolument from the United States, or either of them, nor from any foreign power.

Governor—
how elected.

§ 4945. 2. The Governor shall be elected by the persons qualified to vote for members of the General Assembly, on the fifteenth day of November, in the year eighteen hundred and sixty-five, and biennially thereafter, on the first Wednesday of October, until such time be altered by law, which election shall be held at the places of holding general elections in the several Counties of this State, in the manner prescribed for the election of members of the General Assembly. The returns for every election of Governor shall be sealed up by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives, and transmitted to the Governor, or the person exercising the duties of Governor for the time being, who shall, without opening the said returns, cause the same to be laid before the Senate on the day after the two houses shall have been organized; and they shall be transmitted by the Senate to the House of Representatives. The members of each branch of the General Assembly shall convene in the Representative Chamber, and the President of the Senate and the Speaker of the House of Representatives shall open and publish the returns in presence of the General Assembly; and the person having the majority of the whole number of votes given in shall be declared duly elected Governor of this State; but if no person have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the Legislature to elect, the General Assembly shall immediately elect a Governor *viva voce*; and in all cases of election of a Governor by the General Assembly, a majority of the votes of the members present shall be necessary for a choice. Contested elections shall be determined by both houses of the General Assembly, in such manner as shall be prescribed by law.

Qualifica-
tions of Gov-
ernor.

§ 4946. 3. No person shall be eligible to the office of Governor who shall not have been a citizen of the United States twelve years, and an inhabitant of this State six years, and who hath not attained the age of thirty years.

In case of
death or dis-
ability.

§ 4947. 4. In case of the death, resignation, or disability of the Governor, the President of the Senate shall exercise the Executive powers of the government until such disability be removed, or a successor is elected and qualified. And in case of the death, resignation, or disability of the President of the Senate, the Speaker of the House of Representatives shall exercise the Executive power of the government until the removal of the disability or the election and qualification of a Governor.

Article 3.—Executive Department.

§ 4948. 5. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear, (or affirm, as the case may be,) that I will faithfully execute the office of Governor of the State of Georgia, and will, to the best of my abilities, preserve, protect, and defend the Constitution thereof, and [of] the Constitution of the United States of America."

Oath of Governor.

SECTION II.

SECTION.

- 4949. Commander-in-Chief.
- 4950. Pardons and reprieves.
- 4951. Vacancies and writs of election.
- 4952. May appoint officers.
- 4953. Persons once rejected.

SECTION.

- 4954. Governor has revision of bills.
- 4955. Resolutions and orders.
- 4956. State House officers.
- 4957. Great Seal of State.
- 4958. May appoint secretaries.

§ 4949. 1. The Governor shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof.

Commander-in-Chief.

§ 4950. 2. He shall have power to grant reprieves for offenses against the State, except in cases of impeachment, and to grant pardons, or to remit any part of a sentence, in all cases after conviction, except for treason, murder, or other capital offenses, in which cases he may respite the execution, and make report thereof to the next General Assembly.

Pardons.

§ 4951. 3. He shall issue writs of election to fill vacancies that happen in the Senate or House of Representatives, and shall have power to convene the General Assembly on extraordinary occasions, and shall give them, from time to time, information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.

Writs of election.

§ 4952. 4. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy, unless otherwise provided for by law, and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by law in pursuance thereof.

Vacancies.

§ 4953. 5. A person once rejected by the Senate shall not be re-appointed by the Governor to the same office during the same session or the recess thereafter.

Persons rejected.

§ 4954. 6. The Governor shall have the revision of all bills passed by both Houses, before the same shall become laws, but two-thirds of each House may pass a law notwithstanding his dissent; and if any bill should not be returned by the Governor within five days (Sundays excepted) after it has been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return. He may approve any appropriation and disapprove any other appropriation in the same

Revision of bills.

Article 3.—Executive Department.

Two-third bill, and the latter shall not be effectual unless passed by two-thirds of each House.
vote

§ 4955. 7. Every vote, resolution, or order, to which the concurrence of both Houses may be necessary, except on a question of election or adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by two-thirds of each House, according to the rules and limitations prescribed in case of a bill.
Resolutions, orders, etc.

§ 4956. 8. There shall be a Secretary of State, a Comptroller General, a Treasurer, and Surveyor-General, elected by the General Assembly, and they shall hold their offices for the like period as the Governor, and shall have a competent salary, which shall not be increased or diminished during the period for which they shall have been elected. The General Assembly may at any time consolidate any two of these offices, and require all the duties to be discharged by one officer.
Secretary of State, Comptroller, Treasurer, and Surveyor-General.

§ 4957. 9. The Great Seal of the State shall be deposited in the office of the Secretary of State, and shall not be affixed to any instrument of writing, but by order of the Governor or General Assembly, and that used previously to the year 1861, shall be the Great Seal of the State.
Great Seal of the State.

§ 4958. 10. The Governor shall have power to appoint his own Secretaries, not exceeding two in number.
May appoint Secretaries.

ARTICLE IV.

JUDICIAL DEPARTMENT.

SECTION I.

SECTION.

4959. Judicial department.
4960. Supreme Court.

SECTION.

4961. Jurisdiction not original.
4962. Disposition of cases.

§ 4959. 1. The Judicial powers of this State shall be vested in a Supreme Court for the correction of errors, a Superior, Inferior, Ordinary, and Justices' Courts, and in such other Courts as have been, or may be, established by law.
Judicial power.

§ 4960. 2. The Supreme Court shall consist of three Judges, who shall be elected by the General Assembly, for such term of years—not less than six—as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified, removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.
Supreme Court.

§ 4961. 3. The said Court shall have no original jurisdiction, but shall be a Court alone for the trial and correction of errors in
Jurisdiction.

Article 4.—Judicial Department.

law and equity from the Superior Courts of the several Circuits, and from the City Courts of the cities of Savannah and Augusta, and such other like Courts as may hereafter be established in other cities, and shall sit “at the Seat of Government” at such time or times in each year, as the General Assembly shall prescribe, for the trial and determination of writs of error from said Courts.

§ 4962. 4. The said Court shall dispose of and finally determine every case on the docket of such Court, at the first or second term after such writ of error brought; and in case the plaintiff in error shall not be prepared at the first term of such Court, after error brought, to prosecute the case, unless precluded by some providential cause from such prosecution, it shall be stricken from the docket and the judgment below affirmed. And in any case that may occur, the Court may, in its discretion, withhold its judgment until the term next after the argument thereon.

Cases—how
disposed of.

SECTION II.

SECTION.

- 4963. Judges of the Superior Court.
- 4964. Jurisdiction of Superior Court.
- 4965. Exclusive jurisdiction.
- 4966. Venue and change of.
- 4967. Titles to land.
- 4968. Appellate jurisdiction.

SECTION.

- 4969. Certiorari and new trials.
- 4970. Mandamus, prohibition, etc.
- 4971. Jurisdiction in other cases.
- 4972. Joint obligors.
- 4973. Maker and indorser.
- 4974. Sits in each County.

§ 4963. 1. The Judges of the Superior Courts shall be elected on the first Wednesday in January, until the Legislature shall otherwise direct, immediately before the expiration of the term for which they or either of them may have been appointed or elected, from the Circuits in which they are to serve, by a majority vote of the people of the Circuit qualified to vote for members of the General Assembly, for the term of four years—vacancies to be filled as is provided by the laws of force prior to January 1st 1861—and shall continue in office until their successors shall be elected and qualified; removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.

Judges of
the Superior
Courts.

How elected

Vacancies.

§ 4964. 2. The Superior Court shall have exclusive jurisdiction in all cases of divorce, both total and partial; but no total divorce shall be granted except on the concurrent verdicts of two special juries. In each divorce case, the Court shall regulate the rights and disabilities of the parties.

Jurisdic-
tion of.

§ 4965. 3. The Superior Courts shall also have exclusive jurisdiction in all criminal cases, except as relates to fines for neglect of duty, contempts of Court, violation of road laws, obstructions of water courses, and in all other minor offenses which do not subject the offender or offenders to loss of life, limb, or member, or

Exclusive
jurisdiction.

Article 4.—Judicial Department.

to confinement in the penitentiary ; jurisdiction of all such cases shall be vested in such County or Corporation Courts, or such other Courts, judicatures, or tribunals as now exist, or may hereafter be constituted, under such rules and regulations as the Legislature may have directed, or may hereafter by law direct.

Criminal
cases--where
tried

§ 4966. 4. All criminal cases shall be tried in the County where the crime was committed, except in cases where a jury can not be obtained.

Cases re-
specting ti-
tles to land.

§ 4967. 5. The Superior Court shall have exclusive jurisdiction in all cases respecting titles to land, which shall be tried in the County where the land lies ; and also in all equity causes which shall be tried in the County where one or more of the defendants reside, against whom substantial relief is prayed.

Appellate
jurisdiction.

§ 4968. 6. It shall have appellate jurisdiction in all such cases as may be provided by law.

To correct
errors by
certiorari.

§ 4969. 7. It shall have power to correct errors in inferior judicatories by writ of *certiorari*, and to grant new trials in the Superior Court on proper and legal grounds.

Issue writs
of mandam-
us, etc.

§ 4970. 8. It shall have power to issue writs of mandamus, prohibition, scire facias, and all other writs which may be necessary for carrying its powers fully into effect.

Jurisdiction
in other
cases.

§ 4971. 9. The Superior Court shall have jurisdiction in all other civil cases, and in them the General Assembly may give concurrent jurisdiction to the Inferior Court, or such other County Court as they may hereafter create, which cases shall be tried in the County where the defendant resides.

Joint ob-
ligors.

§ 4972. 10. In case of joint obligors, or joint promissors or copartners, or joint trespassers residing in different Counties, the suit may be brought in either County.

Maker and
indorser.

§ 4973. 11. In case of a maker and indorser or indorsers of promissory notes residing in different Counties in this State, the same may be sued in the County where the maker resides.

Sessions of
Courts.

§ 4974. 12. The Superior Court shall sit in each County not less than twice in every year, at such stated times as have been or may be appointed by the General Assembly, and the Inferior and County Courts at such times as the General Assembly may direct.

SECTION III.

SECTION.

- 4975. Salaries of Judges.
- 4976. Attorney and Solicitors General.
- 4977. Justices and Judge—Courts, etc.

SECTION.

- 4978. Justices of the Peace.
- 4979. Court of Ordinary.

Salary of
Judges.

§ 4975. 1. The Judges shall have salaries adequate to their services fixed by law, which shall not be diminished nor increased during their continuance in office, but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them.

Article 4.—Judicial Department.

§ 4976. 2. There shall be a State's Attorney and Solicitors, elected in the same manner as the Judges of the Superior Court, and commissioned by the Governor, who shall hold their offices for the term of four years, or until their successors shall be appointed and qualified, unless removed by sentence on impeachment, or by the Governor, on the address of two-thirds of each branch of the General Assembly. They shall have salaries adequate to their services fixed by law, which shall not be increased or diminished during their continuance in office.

State's Attorney and Solicitor General.

Salaries of.

§ 4977. 3. The Justice or Justices of the Inferior Court, and the Judges of such other County Courts as may by law be created, shall be elected in each County by the persons entitled to vote for members of the General Assembly.

Justices of the Inferior Court.

§ 4978. 4. The Justices of the Peace shall be elected in each district by the persons entitled to vote for members of the General Assembly.

Justices of the Peace.

§ 4979. 5. The powers of a Court of Ordinary and Probate, shall be vested in an Ordinary for each County, from whose decision there may be an appeal to the Superior Court, under regulations prescribed by law. The Ordinary shall be, *ex officio*, Clerk of said Court, and may appoint a deputy Clerk. The Ordinary, as Clerk, or his deputy, may issue citations, and grant temporary letters of administration, to hold until permanent letters are granted, and said Ordinary, as Clerk, or his deputy, may grant marriage licenses. The Ordinaries in and for the respective Counties shall be elected, as other County officers are, on the first Wednesday in January, 1868, and every fourth year thereafter, and shall be commissioned by the Governor for the term of four years. In case of any vacancy of said office of Ordinary, from any cause, the same shall be filled by election, as is provided in relation to other County officers, and until the same is filled, the Clerk of the Superior Court for the time being, shall act as Clerk of said Court of Ordinary.

The Ordinary and his jurisdiction.

Election and commission.

Vacancies.

ARTICLE V.

MISCELLANEOUS PROVISIONS.

SECTION I.

SECTION.

- 4980. Qualification of voters.
- 4981. Elections by General Assembly.
- 4982. Elections by the people.
- 4983. Civil officers continue.
- 4984. Graduation of laws.
- 4985. Local and private statutes.

SECTION.

- 4986. Judgments, decrees, and orders.
- 4987. Rights secured.
- 4988. Marriage between white and black.
- 4989. Militia and County officers.
- 4990. Amendments of Constitution.

§ 4980. 1. The electors of members of the General Assembly shall be free white male citizens of this State, and shall have at-

See also Const. Art 2 Section 2

Article 5.—Miscellaneous Provisions.

Qualifica-
tion of vo-
ters.

tained the age of twenty-one years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying agreeably to law, for the year preceding the election, shall be citizens of the United States, and shall have resided six months either in the district or County, and two years within this State, and no person not qualified to vote for members of the General Assembly, shall hold any office in this State.

Election by
the General
Assembly.

§ 4981. 2. All elections by the General Assembly shall be *viva voce*, and the vote shall always appear on the Journal of the House of Representatives, and where the Senate and House of Representatives unite for the purpose of electing, they shall meet in the Representative chamber, and the President of the Senate shall, in such cases, preside and declare the person or persons elected.

Election by
the people.

§ 4982. 3. In all elections by the people, the electors shall vote by ballot until the General Assembly shall otherwise direct.

Civil offi-
cers hereto-
fore elected
or appointed

§ 4983. 4. All civil officers heretofore commissioned by the Governor, or who have been duly appointed, or elected, since the first day of January last, but who have not received their commissions, and who have not resigned, nor been removed from office, and whose terms of office shall not have expired, shall continue in the exercise of the duties of their respective offices during the periods for which they were duly appointed or duly elected as aforesaid, and commissioned, and until their successors shall be appointed under the provisions of this Constitution, unless removed from office as herein provided.

Graduation
of laws.

§ 4984. 5. The laws of general operation now of force in this State, are—1st, as the supreme law, the Constitution of the United States, the laws of the United States in pursuance thereof, and all treaties made under the authority of the United States; 2d, as next in authority thereto, this Constitution; 3d, in subordination to the foregoing, all laws declared of force by an act of the General Assembly of this State, assented to December 19th, A.D. eighteen hundred and sixty, entitled “An act to approve, adopt, and make of force in the State of Georgia, a revised code of laws, prepared under the direction and by authority of the General Assembly thereof, and for other purposes therewith connected,” an act of the General Assembly aforesaid, assented to December 16th, A.D. eighteen hundred and sixty-one, amendatory of the foregoing, and an act of the General Assembly aforesaid, assented to December 13th, A.D. eighteen hundred and sixty-two, entitled “An act to settle the conflicts between the Code and the legislation of this General Assembly;” also, all acts of the General Assembly aforesaid, passed since the date last written, altering, amending, repealing, or adding to any portion of law hereinbefore mentioned (the latter enactments having preference in case of conflict); and also, so much of the common and statute law of England, and of the statute law of this State, of force in Georgia in the year eighteen hundred and sixty, as is not expressly superse-

Article 5.—Miscellaneous Provisions.

ded by, nor inconsistent with said Code, though not embodied therein, except so much of the law aforesaid as may violate the supreme law, herein recognized, or may conflict with this Constitution, and except so much thereof as refers to persons held in slavery, which excepted laws shall henceforth be inoperative and void, and any future General Assembly of this State shall be competent to alter, amend, or repeal any portion of the law declared to be of force in this third Specification of the fifth Clause of this fifth Article. If in any statute law herein declared of force, the word "Confederate" occurs before the word States, such law is hereby amended by substituting the word "United" for the word "Confederate."

§ 4985. 6. Local and private statutes heretofore passed, intended for the benefit of Counties, cities, towns, corporations, and private persons, not inconsistent with the supreme law, nor with this Constitution, and which have neither expired by their own limitations nor have been repealed, shall have the force of Statute law subject to judicial decision, as to their validity when enacted, and to any limitations imposed by their own terms. Local and
and private
statutes.

§ 4986. 7. All judgments, decrees, orders, and other proceedings of the several Courts of this State heretofore made, within the limits of their several jurisdictions, are hereby ratified and affirmed, subject only to past or future reversal by motion for new trial, appeal, bill of review, or other proceeding, in conformity with the law of force when they were made. Judgments
and decrees.

§ 4987. 8. All rights, privileges and immunities which may have vested in, or accrued to any person or persons, in his, her, or their own right, or in any fiduciary capacity, under and in virtue of any act of the General Assembly, or any judgment, decree, or order, or other proceeding of any Court of competent jurisdiction in this State, since the first day of January, A.D. eighteen hundred and sixty-one, shall be held inviolate by all Courts before which they may be brought in question, unless attacked for fraud. Privileges
vested since
1st January,
1861.

§ 4988. 9. The marriage relation between white persons and persons of African descent, is forever prohibited, and such marriage shall be null and void; and it shall be the duty of the General Assembly to enact laws for the punishment of any officer who shall knowingly issue a license for the celebration of such marriage, and any officer or minister of the gospel who shall marry such persons together. Marriages—
white and
black per-
sons.

§ 4989. 10. All militia and County officers shall be elected by the people, under such regulations as have been or may be prescribed by law. Militia and
County offi-
cers.

§ 4990. 11. This Constitution shall be altered or amended only by a convention of the people, called for that purpose by act of the General Assembly. How alter-
ed or amend-
ed.

Signed Nov. 7th, 1865.

HERSCHEL V. JOHNSON, *President.*

Attest: J. D. WADDELL, Secretary.

Article 1.—Legislative Department.

CONSTITUTION OF THE UNITED STATES,

AS ADOPTED IN CONVENTION, BY THE UNANIMOUS CONSENT OF THE STATES PRESENT, ON THE 17TH DAY OF SEPTEMBER, IN THE YEAR OF OUR LORD 1787, AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA, THE TWELFTH; WITH THE AMENDMENTS SUBSEQUENTLY MADE TO THE SAME.

P R E A M B L E.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE 1.—*Legislative Department.*

ARTICLE 2.—*Executive Department.*

ARTICLE 3.—*Judicial Department.*

ARTICLE 4.—*Relative Rights of States.*

ARTICLE 5.—*Amendments—how made.*

ARTICLE 6.—*Miscellaneous Provisions.*

ARTICLE 7.—*Ratifications.*

8.—*Amendments.*

ARTICLE I.

LEGISLATIVE DEPARTMENT.

SECTION.

- 4991. Legislative Department.
- 4992. House of Reps.—members chosen.
- 4993. Qualification.
- 4994. Apportionment of.
- 4995. Vacancies—how filled.
- 4996. Officers—power of impeachment.
- 4997. Senate—how chosen.
- 4998. Classed—vacancies.
- 4999. Qualification.
- 5000. Vice-President.
- 5001. Other officers.
- 5002. Trial of impeachment.
- 5003. Judgments on.
- 5004. Elections—how held.
- 5005. Meetings of Congress.
- 5006. Elections—how judged.
- 5007. Rules.
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- 5009. Adjournments.
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- 5013. Passing bills—veto.
- 5014. Passing resolutions.
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SECTION.

- 5016. Loans.
- 5017. Commerce.
- 5018. Naturalization—bankruptcy.
- 5019. Coin—weights and measures.
- 5020. Counterfeiting.
- 5021. Post-offices and roads.
- 5022. Science and arts.
- 5023. Courts—certain crimes.
- 5024. Declare war.
- 5025. Raise armies.
- 5026. Maintain a navy.
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- 5028. Call out militia.
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- 5035. Direct tax.
- 5036. Exportation duty.
- 5037. Appropriations.
- 5038. Titles of nobility.
- 5039. Limitations upon.
- 5040. Individual States.

Article 1.—Legislative Department.

SECTION I.

§ 4991. 1. All Legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Legislative powers.

SECTION II.

§ 4992. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. Members House of Representatives—how chosen.

§ 4993. 2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. Qualification of members House of Representatives.

§ 4994. 3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. Apportionment of representatives.

§ 4995. 4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies. Vacancies—how filled.

§ 4996. 5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. House of Representatives—powers.

SECTION III.

§ 4997. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote. Senate—how chosen.

§ 4998. 2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third

Article 1.—Legislative Department.

Vacancies—
how filled. class at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature which shall then fill such vacancies.

Senators
qualification § 4999. 3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Vice-Pres-
ident. § 5000. 4. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

Senate to
choose offi-
cers. § 5001. 5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Try im-
peachments. § 5002. 6. The Senate shall have the sole power to try all impeachments; when sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment
on impeach-
ment. § 5003. 7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

Elections—
how held. § 5004. 1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

Congress
assemble an-
nually. § 5005. 2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION V.

Elections—
how judged. § 5006. 1. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Quorum in
Senate and
House of Re-
presenta-
tives. § 5007. 2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Rules.

Article 1—Legislative Department.

§ 5008. 3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Journals of each house.

Yeas and nays.

§ 5009. 4. Neither House, during the session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Adjournment.

SECTION VI.

§ 5010. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

Compensation.

Privileges.

§ 5011. 2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Members not eligible to office.

SECTION VII.

§ 5012. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Revenue bills.

§ 5013. 2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Passing bills.

Veto.

Article 1.—Legislative Department.

Resolutions,
etc. — how
passed.

§ 5014. 3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

Powers of Congress. § 5015. The Congress shall have power—

Taxes. 1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Loans. 2. To borrow money on the credit of the United States:

Commerce. 3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

Naturalization, etc. 4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

Coin, weights and measures. 5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Punish counterfeiting. 6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Post-offices, etc. 7. To establish post-offices and post-roads:

Sciences and arts. 8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Courts. Punish piracies, etc. 9. To constitute tribunals inferior to the Superior Court; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:

Declare war. 10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Raise armies. 11. To raise and support armies; (but no appropriation of money to that use shall be for a longer term than two years:)

Navy. 12. To provide and maintain a navy:

Military law. 13. To make rules for the government and regulation of the land and naval forces:

Call out the militia. 14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

Organize militia. 15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress:

Exclusive jurisdiction. 16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by

Article 1.—Legislative Department.

cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Make all laws necessary, etc.

SECTION IX.

§ 5016. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year eighteen hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Importation of slaves after 1808.

§ 5017. 2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Habeas corpus.

§ 5018. 3. No bill of attainder, or *ex post facto* law, shall be passed. Attainder.

§ 5019. 4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. Tax.

§ 5020. 5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another. No exportation duty.

§ 5021. 6. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Money—how drawn.

§ 5022. 7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State. Titles of nobility not allowed.

SECTION X.

§ 5023. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. Limitations of the powers of the individual States.

§ 5024. 2. No State shall, without the consent of the Congress,

Article 2.—Executive Department.

lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in a war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

EXECUTIVE DEPARTMENT.

SECTION.

- 5025. President.
- 5026. Mode of election.
- 5027. Time of election.
- 5028. Qualification.
- 5029. Vice-President—when to act.
- 5030. President's compensation.

SECTION.

- 5031. His oath.
- 5032. His powers.
- 5033. Treaties—nomination.
- 5034. Filling vacancies.
- 5035. His duties.
- 5036. Impeachment.

SECTION I.

Executive power. § 5025. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

Manner of electing President and Vice-President. § 5026. 2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress ; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Time of election. § 5027. 3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

Who may be elected President. § 5028. 4. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In what cases the Vice-President to act as President. § 5029. 5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as Presi-

Article 2.—Executive Department.

dent, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

§ 5030. 6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them. President's compensation.

§ 5031. 7. Before he enters on the execution of his office, he shall take the following oath or affirmation: His oath.

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

SECTION II.

§ 5032. 1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. President's powers.

§ 5033. 2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in the heads of departments. Make treaties.
Appoint officers.

§ 5034. 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. Vacancies.

SECTION III.

§ 5035. 1. He shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive Ambassadors and other public Ministers. He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States. President's duties.

Article 3.—Judicial Department.

SECTION IV.

§ 5036. 1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Officers removable by impeachment.

ARTICLE III.

JUDICIAL DEPARTMENT.

SECTION.

5037. Courts and Judges.

5038. Jurisdiction.

5039. Of Supreme Court.

SECTION.

5040. Trial by jury.

5041. Treason.

5042. Attainder.

SECTION I.

§ 5037. 1. The Judicial power of the United States shall be vested in one Supreme Court, and such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and inferior Courts shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Judicial powers and tenure of Judges.

SECTION II.

§ 5038. 1. The Judicial power shall extend to all cases in Law and Equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects.

Jurisdiction—extent of.

§ 5039. 2. In all cases affecting Ambassadors, or other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Whether original or appellate.

§ 5040. 3. The trial of all crimes, except in cases of impeachment, shall be by jury: and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Trials by jury.

SECTION III.

§ 5041. 1. Treason against the United States shall consist

Treason.

Article 4.—Relative Rights of States.

only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

§ 5042. 2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. Attainder.

ARTICLE IV.

RELATIVE RIGHTS OF STATES.

SECTION.

- 5043. Acts and records of States.
- 5044. Citizens of different States.
- 5045. Fugitives from justice.
- 5046. Fugitives from service.

SECTION.

- 5047. New States admitted.
- 5048. Territories of United States.
- 5049. Republican Government.

SECTION I.

§ 5043. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. Acts and records of the States.

SECTION II.

§ 5044. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Citizens' privileges.

§ 5045. 2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. Fugitives from justice.

§ 5046. 3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. From service.

SECTION III.

§ 5047. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned, as well as of the Congress. New States admitted.

§ 5048. 2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or Power over Territories.

Article 5.—Amendments—how made.

other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

Republican
form.

§ 5049. 1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

ARTICLE V.

A M E N D M E N T S — H O W M A D E .

SECTION 5050. Amendments—how made.

Amend-
ments—how
attained.

§ 5050. 1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of this Constitution when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *provided*, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

SECTION.

5051. Prior debts.

5052. Supreme law.

SECTION.

5053. Oath of officers.

Prior debts
of govern-
ment.

§ 5051. 1. All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.

Constitution
and treaties
are the su-
preme law.

5052. 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the Judges in every

Article 7.—Ratifications.

State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding.

§ 5053. 3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Oath to the Constitution

No religious test.

ARTICLE VII.

R A T I F I C A T I O N S .

SECTION 5054. Ratifications.

§ 5054. 1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Ratification.

ARTICLE VIII.

A M E N D M E N T S .

SECTION.

- 5055. Religion, press, assembling.
- 5056. Right to bear arms.
- 5057. Quartering troops.
- 5058. Searches and seizures.
- 5059. Trial for crimes—private prop., etc.
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- 5061. Trial in civil cases.
- 5062. Bail and punishments.

SECTION.

- 5063. Rights reserved.
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- 5066. Election of President and V. P.
- 5067. Election of V. President by Senate.
- 5068. Qualification.
- 5069. Abolishment of slavery.
- 5070. How enforced.

§ 5055. ART. I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Rights of conscience, freedom of the press, etc.

§ 5056. ART. II. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Of the right to bear arms.

§ 5057. ART. III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Of quartering troops.

§ 5058. ART. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and partic-

Of searches, seizures and general warrants.

8.—Amendments.

ularly describing the place to be searched, and the persons or things to be seized.

§ 5059. ART. V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

§ 5060. ART. VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

§ 5061. ART. VII. In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the Common Law.

§ 5062. ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

§ 5063. ART. IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

§ 5064. ART. X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

§ 5065. ART. XI. The Judicial power of the United States shall not be construed to extend to any suit in Law or Equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

§ 5066. ART. XII. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the govern-

8.—Amendments.

ment of the United States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

§ 5067. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

On failure to elect Vice-President, Senate shall elect.

§ 5068. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

Qualification

§ 5069. ART. XIII. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Slavery abolished.

§ 5070. Congress shall have power to enforce this Article by appropriate legislation.

How enforced.



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ERRATA.

THERE are some errors in the side-notes and head-notes of the Code, but as they do not affect the *law*, no mention is made of them here. Errors in the text may have escaped notice, but it is believed, that if such is the case, they are so trivial, as that it is unnecessary to specify them further than as follows :

In line 1 of Section 289, for " Court " read " Code."

In line 5 of Section 1825, for " slaves " read " employees."

In line 1 of Section 1953, for " guarantees " read " guarantors."

In line 9 of Section 2399, for " 2458 " read " 2457."

In line 6 of Section 2741, for " judgment " read " payment."

In line 24 of Section 4358, for " entrusted " read " entrusting."

EXPLANATORY NOTE.

As there have been frequent changes in the Government of the State, as well as in her relations to the Government of the United States, within a few years past, and as dates of events are often very important to ascertain the rights of citizens, it is deemed proper to state that the Code of Georgia, prepared by Clarke, Cobb and Irwin, was adopted, as containing the Laws of the State, on the 19th day of December, 1860, to take effect and be of force on the 1st day of January, 1862; but by an Act of the Legislature of 1861 the operation of said Code was suspended until the 1st day of January, 1863, at which time said Code went into operation. On the 7th day of November, 1865, a Convention of the State of Georgia made various important amendments to the Constitution, and again adopted the Code, so far as the same was not in conflict with said amended Constitution, the ordinances of said Convention and the Constitution and Laws of the United States; after which, and in conformity thereto, (as well as to the then existing Constitution and Laws of the United States,) the undersigned revised, corrected and republished said Code, with the amended Constitution of 1865 appended thereto. On the 11th day of March, 1868, a Convention of the State of Georgia framed a new Constitution, which is, together with the 14th Article of the Constitution of the United States, added to said revised Code as a part thereof, by which the Constitution of 1865 is superseded, but which is allowed to remain in the book for the purpose of reference. Said Convention also adopted said revised Code, as containing the Laws of Georgia, so far as the same is not in conflict with the Constitution of 1868, the ordinances of said Convention and the Constitution and Laws of the United States.

D. IRWIN.

AMENDMENT ADOPTED JULY 1, 1868.

ARTICLE XIV.

SECTION.

5071. Citizens, who are.

5072. Representation. Apportionment.

5073. Senators and Representatives—
qualifications.

SECTION.

5074. Public debt, validity of.

5075. Power of Congress.

Citizens—
protection of § 5071. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Representa-
tive appor-
tionment. § 5072. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Representa-
tion reduc-
ed—when. § 5073. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Disqualifi-
cation of
Senators, etc § 5074. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any State, shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims, shall be held illegal and void.

Power of
Congress. § 5075. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article I.—Declaration of Rights.

CONSTITUTION OF THE STATE OF GEORGIA,
AS ADOPTED BY THE STATE CONVENTION AT ATLANTA, ON
THE 11TH DAY OF MARCH, 1868, AND RATIFIED BY
THE PEOPLE AT AN ELECTION HELD
APRIL 20TH, 21ST, 22D, 23D, 1868.

PREAMBLE.

We, the people of Georgia, in order to form a permanent Government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the Author of all good Government, do ordain and establish this Constitution for the State of Georgia.

Preamble.

- ARTICLE I.—*Declaration of Rights.*
- ARTICLE II.—*Franchise and Elections.*
- ARTICLE III.—*Legislative Department.*
- ARTICLE IV.—*Executive Department.*
- ARTICLE V.—*Judicial Department.*
- ARTICLE VI.—*Education.*
- ARTICLE VII.—*Homestead and Exemption.*
- ARTICLE VIII.—*Militia.*
- ARTICLE IX.—*County Officers.*
- ARTICLE X.—*Seat of Government.*
- ARTICLE XI.—*Laws of Force.*
- ARTICLE XII.—*Amendments to the Constitution.*

ARTICLE I.

DECLARATION OF FUNDAMENTAL PRINCIPLES.

SECTION.

- 5076. Duty of Government.
- 5077. Citizens, who are, etc.
- 5078. Life, liberty and property.
- 5079. Slavery.
- 5080. Right of the People.
- 5081. No religious test.
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- 5083. Life or liberty—jeopardized.
- 5084. Freedom of speech.
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- 5086. Social status of citizen.
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- 5088. Habeas Corpus.
- 5089. Arms, right to keep.
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- 5091. Excessive bail.
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SECTION.

- 5093. Imprisonment for debt.
- 5094. Libel.
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- 5096. Penalties—how proportioned.
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- 5098. Lottery.
- 5099. Corruption of blood.
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- 5101. Laws shall be general.
- 5102. Taxation—*Ad valorem*.
- 5103. Taxation, by counties, etc.
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- 5106. Departments of Government.
- 5107. Legislative acts void—when.
- 5108. Paramount allegiance.

Article I.—Declaration of Rights.

§ 5076. I. Protection to person and property is the paramount duty of Government, and shall be impartial and complete.

§ 5077. II. All persons born, or naturalized, in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges and immunities guaranteed in this Section.

§ 5078. III. No person shall be deprived of life, liberty or property, except by due process of law.

§ 5079. IV. There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof.

§ 5080. V. The right of the people to appeal to the Courts, to petition Government on all matters, and peaceably to assemble for the consideration of any matter shall never be impaired.

§ 5081. VI. Perfect freedom of religious sentiment shall be and the same is hereby secured, and no inhabitant of this State shall ever be molested in person or property, or prohibited from holding any public office or trust on account of his religious opinion; but the liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the people.

§ 5082. VII. Every person charged with an offence against the laws, shall have the privilege and benefit of counsel, shall be furnished, on demand, with a copy of the accusation and a list of the witnesses on whose testimony the charge against him is founded, shall have compulsory process to obtain the attendance of his own witnesses, shall be confronted with the witnesses testifying against him, and shall have a public and speedy trial by an impartial jury.

§ 5083. VIII. No person shall be put in jeopardy of life or liberty more than once for the same offence, save on his or her own motion for a new trial, after conviction, or in case of mis-trial.

§ 5084. IX. Freedom of speech and freedom of the press are inherent elements of political liberty. But while every citizen may freely speak, or write, or print on any subject, he shall be responsible for the abuse of the liberty.

§ 5085. X. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath, or affirmation, particularly describing the place, or places, to be searched, and the person, or things, to be seized.

§ 5086. XI. The social status of the citizen shall never be the subject of legislation.

Article I.—Declaration of Rights.

- § 5087. XII. No person shall be molested for his opinions, or be subject to any civil or political incapacity, or acquire any civil or political advantage in consequence of such opinions. Opinions.
- § 5088. XIII. The writ of *habeas corpus* shall not be suspended unless, in case of rebellion or invasion, the public safety may require it. Habeas corpus.
- § 5089. XIV. A well regulated Militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the General Assembly shall have power to prescribe by law the manner in which arms may be borne. Arms.
- § 5090. XV. The punishment of all frauds shall be provided by law. Frauds.
- § 5091. XVI. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, nor shall any person be abused in being arrested, whilst under arrest, or in prison. Bail, fines and punishment.
- § 5092. XVII. The power of the Courts to punish for contempt shall be limited by legislative acts. Contempt of Courts.
- § 5093. XVIII. There shall be no imprisonment for debt. Imprisonment for debt.
- § 5094. XIX. In all prosecutions or indictments for libel, the truth may be given in evidence, and the jury shall have the right to determine the law and the facts. Libel.
- § 5095. XX. Private ways may be granted upon just compensation being paid by the applicant. Private ways.
- § 5096. XXI. All penalties shall be proportioned to the nature of the offence. Penalties.
- § 5097. XXII. Whipping, as a punishment for crime, is prohibited. Whipping.
- § 5098. XXIII. No Lottery shall be authorized, or sale of Lottery tickets allowed, in this State, and adequate penalties for such sale shall be provided by law. Lottery.
- § 5099. XXIV. No conviction shall work corruption of blood, and no conviction of treason shall work a general forfeiture of estate longer than during the life of the person attainted. Corruption of blood and forfeiture of estate.
- § 5100. XXV. Treason against the State of Georgia shall consist only in levying war against the State, or the United States, or adhering to the enemies thereof, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his own confession in open Court. Treason.
- § 5101. XXVI. Laws shall have a general operation, and no general law, affecting private rights, shall be varied, in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract is capable of such free consent. Laws shall be general.
- § 5102. XXVII. The power of taxation over the whole State shall be exercised by the General Assembly only to raise revenue

Article II.—Franchise and Elections.

Taxation—
shall be ad
valorem. for the support of Government, to pay the public debt, to provide a general school fund, for common defence, and for public improvement; and taxation on property shall be *ad valorem*, only, and uniform on all species of property taxed.

By County
and municipal authority § 5103. XXVIII. The General Assembly may grant the power of taxation to the County authorities and Municipal corporations, to be exercised within their several territorial limits.

Poll tax. § 5104. XXIX. No poll tax shall be levied except for educational purposes, and such tax shall not exceed One Dollar annually on each poll.

Liens. § 5105. XXX. Mechanics and laborers shall have liens upon the property of their employers for labor performed or material furnished, and the Legislature shall provide for the summary enforcement of the same.

Departments of Government 5106. XXXI. The Legislative, Executive and Judicial Departments shall be distinct; and each department shall be confided to a separate body of Magistracy. No person or collection of persons, being of one Department, shall exercise any power properly attached to either of the others, except in cases herein expressly provided.

Legislative acts void. § 5107. XXXII. Legislative acts in violation of this Constitution, or the Constitution of the United States, are void, and the Judiciary shall so declare them.

Paramount allegiance. § 5108. XXXIII. The State of Georgia shall ever remain a member of the American Union; the People thereof are a part of the American Nation; every citizen thereof owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State, in contravention or subversion thereof, shall ever have any binding force.

ARTICLE II.

FRANCHISE AND ELECTIONS.

SECTION.

- 5109. Elections—by ballot.
- 5110. Electors, who are—oath.
- 5111. Disqualification of voters.
- 5112. Holders of public money.
- 5113. Dueling.
- 5114. Registration of Electors.

SECTION.

- 5115. Freedom from arrest.
- 5116. Sale of liquors.
- 5117. Election returns.
- 5118. Protection of Electors.
- 5119. Day of Election.

Ballot. § 5109. I. In all elections, by the People, the Electors shall vote by ballot.

Electors. § 5110. II. Every male person, born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old, or upward, who shall have resided in this

Article II.—Franchise and Elections.

State six months next preceding the election, and shall have resided thirty days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year preceding the election, (except as hereinafter provided) shall be deemed an Elector; and every male citizen of the United States, of the age aforesaid, (except as hereinafter provided) who may be a resident of the State at the time of the adoption of this Constitution, shall be deemed an Elector, and shall have all the rights of an Elector, as aforesaid: *Provided*, That no soldier, sailor, or marine in the military or naval service of the United States, shall acquire the rights of an Elector by reason of being stationed on duty in this State; and no person shall vote, who, if challenged, shall refuse to take the following oath: "I do swear that I have not given, or received, nor do I expect to give, or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected, at this election, nor have I given, or promised any reward, or made any threat, by which to prevent any person from voting at this election."

Oath.

§ 5111. III. No person convicted of felony or larceny before any court of this State, or of, or in the United States, shall be eligible to any office or appointment of honor or trust within this State, unless he shall have been pardoned.

Felony or larceny disqualifies.

§ 5112. IV. No person who is the holder of any public moneys shall be eligible to any office in this State, until the same is accounted for and paid into the Treasury.

Holder of public money.

§ 5113. V. No person who, after the adoption of this Constitution, being a resident of this State, shall engage in a duel in this State, or elsewhere, or shall send or accept a challenge, or be aider or abettor to such duel, shall vote or hold office in this State; and every such person shall, also, be subject to such punishment as the law may prescribe.

Dueling.

§ 5114. VI. The General Assembly may provide, from time to time, for the registration of all Electors, but the following classes of persons shall not be permitted to register, vote, or hold office: First—Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the Penitentiary, or bribery. Second—Idiots or insane persons.

Registration of Electors.

§ 5115. VII. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest for five days before an election, during the election, and two days subsequent thereto.

Freedom from arrest.

§ 5116. VIII. The sale of intoxicating liquors on days of election is prohibited.

Sale of liquors.

§ 5117. IX. Returns of election for all civil officers elected by the people, who are to be commissioned by the Governor, and, also,

Election returns.

Article III.—Legislative Department.

for the Members of the General Assembly, shall be made to the Secretary of State, unless otherwise provided by law.

§ 5118. X. The General Assembly shall enact laws giving adequate protection to Electors before, during and subsequent to elections.

§ 5119 XI. The election of Governor, Members of Congress, and of the General Assembly, after the year 1868, shall commence on the Tuesday after the first Monday in November, unless otherwise provided by law.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

SECTION I.

SECTION.

- 5120. Legislative power.
- 5121. Senators and Representatives.
- 5122. Meeting of General Assembly.

SECTION.

- 5123. Disqualification of members.
- 5124. Effect of removal.

§ 5120. I. The Legislative Power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, and until otherwise directed, the members thereof, after the first election, shall be elected, and the returns of the election made as now prescribed by law.

§ 5121. II. The members of the Senate shall be elected for four years, except that the members elected at the first election from the twenty-two Senatorial Districts numbered in this Constitution with odd numbers, shall only hold their office for two years. The members of the House of Representatives shall be elected for two years. The election for members of the General Assembly shall begin on Tuesday after the first Monday in November of every second year, except the first election, which shall be within sixty days after the adjournment of this Convention; but the General Assembly may by law change the time of election, and the members shall hold until their successors are elected and qualified.

§ 5122. III. The first meeting of the General Assembly shall be within ninety days after the adjournment of this Convention, after which, it shall meet annually on the second Wednesday in January, or on such other day as the General Assembly may prescribe. A majority of each House shall constitute a quorum to transact business; but a smaller number may adjourn from day to day and compel the presence of its absent members as each House may provide. No session of the General Assembly, after

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the second under this Constitution, shall continue longer than forty days, unless prolonged by a vote of two-thirds of each branch thereof. Sessions limited.

§ 5123. IV. No person holding a Military Commission, or other appointment or office, having any emolument or compensation annexed thereto, under this State or the United States, or either of them, except Justices of the Peace and officers of the Militia, nor any defaulter for public money, or for any legal taxes required of him, shall have a seat in either House; nor shall any Senator or Representative, after his qualification as such, be elected by the General Assembly or appointed by the Governor, either with or without the advice and consent of the Senate, to any office or appointment, having any emolument annexed thereto, during the time for which he shall have been elected. Eligibility

§ 5124. V. The seat of a member of either House shall be vacated on his removal from the District from which he was elected. Removal vacates.

SECTION II.

SECTION.

5125. Senatorial Districts.

5126. Qualification of Senators.

SECTION.

5127. The President.

5128. Trial of Impeachment.

§ 5125. There shall be Forty-Four Senatorial Districts in this State, composed, each, of three contiguous Counties, from each of which Districts one Senator shall be chosen. Until otherwise arranged, as hereinafter provided, the said Districts shall be constituted as follows: Senatorial Districts.

The First District of Chatham, Bryan and Effingham.
 The Second District of Liberty, Tatnall and McIntosh.
 The Third District of Wayne, Pierce and Appling.
 The Fourth District of Glynn, Camden and Charlton.
 The Fifth District of Coffee, Ware and Clinch.
 The Sixth District of Echols, Lowndes and Berrien.
 The Seventh District of Brooks, Thomas and Colquitt.
 The Eighth District of Decatur, Mitchell and Miller.
 The Ninth District of Early, Calhoun and Baker.
 The Tenth District of Dougherty, Lee and Worth.
 The Eleventh District of Clay, Randolph and Terrell.
 The Twelfth District of Stewart, Webster and Quitman.
 The Thirteenth District of Sumter, Schley and Macon.
 The Fourteenth District of Dooly, Wilcox and Pulaski.
 The Fifteenth District of Montgomery, Telfair and Irwin.
 The Sixteenth District of Laurens, Johnson and Emanuel.
 The Seventeenth District of Bullock, Scriven and Burke.
 The Eighteenth District of Richmond, Glasscock and Jefferson.
 The Nineteenth District of Taliaferro, Warren and Greene.
 The Twentieth District of Baldwin, Hancock and Washington.
 The Twenty-First District of Twiggs, Wilkinson and Jones.
 The Twenty-Second District of Bibb, Monroe and Pike.
 The Twenty-Third District of Houston, Crawford and Taylor.
 The Twenty-Fourth District of Marion, Chattahoochee and Muscogee.
 The Twenty-Fifth District of Harris, Upson and Talbot.

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The Twenty-Sixth District of Spalding, Butts and Fayette.
The Twenty-Seventh District of Newton, Walton and Clarke.
The Twenty-Eighth District of Jasper, Putnam and Morgan.
The Twenty-Ninth District of Wilkes, Lincoln and Columbia.
The Thirtieth District of Oglethorpe, Madison and Elbert.
The Thirty-First District of Hart, Franklin and Habersham.
The Thirty-Second District of White, Lumpkin and Dawson.
The Thirty-Third District of Hall, Banks and Jackson.
The Thirty-Fourth District of Gwinnett, DeKalb and Henry.
The Thirty-Fifth District of Clayton, Fulton and Cobb.
The Thirty-Sixth District of Meriwether, Coweta and Campbell.
The Thirty-Seventh District of Troup, Heard and Carroll.
The Thirty-Eighth District of Haralson, Polk and Paulding.
The Thirty-Ninth District of Cherokee, Milton and Forsyth.
The Fortieth District of Union, Towns and Rabun.
The Forty-First District of Fannin, Gilmer and Pickens.
The Forty-Second District of Bartow, Floyd and Chattooga.
The Forty-Third District of Murray, Whitfield and Gordon.
The Forty-Fourth District of Walker, Dade and Catoosa.

If new counties be created, which it adjoins, and from which the larger portion of its territory is taken. The Senatorial Districts may be changed by the General Assembly, but only at the first session after the publication of each census by the United States Government, and their number shall not be increased.

Qualifica-
tion of Sen-
ators. § 5126. II. The Senators shall be citizens of the United States, who have attained the age of twenty-five years, and who, after the first election under this Constitution, shall have been citizens of this State for two years, and for one year resident of the District from which elected.

President of
the Senate. § 5127. III. The Presiding Officer of the Senate shall be styled the President of the Senate, and shall be elected, *viva voce*, from the Senators.

Trial of im-
peachments. § 5128. IV. The Senate shall have the sole power to try im-
peachments. When sitting for that purpose, the members shall be on oath or affirmation, and shall be presided over by one of the Judges of the Supreme Court, selected for that purpose by a *viva voce* vote of the Senate; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgments in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, within this State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION III.

SECTION.

- 5129. House of Representatives.
- 5130. Change of Appointment.
- 5131. Qualification of Members.

SECTION.

- 5132. Speaker of the House.
- 5133. Power of Impeachment.
- 5134. Bills for Raising Revenue.

§ 5129. I. The House of Representatives shall consist of one

Article III.—Legislative Department.

hundred and seventy-five Representatives, apportioned as follows: To the six largest Counties, to wit: Chatham, Richmond, Fulton, Bibb, Houston and Burke, three Representatives each; to the thirty-one next largest, to-wit: Bartow, Columbia, Cobb, Coweta, Clarke, Decatur, Dougherty, Floyd, Gwinnett, Greene, Hancock, Harris, Jefferson, Lee, Muscogee, Monroe, Meriwether, Morgan, Macon, Newton, Oglethorpe, Pulaski, Randolph, Sumter, Stewart, Troup, Thomas, Talbot, Washington, Wilkes, and Warren, two Representatives each; and to the remaining ninety-five Counties, one Representative each.

House of Representatives.

§ 5130. II. The above apportionment may be changed by the General Assembly after each census by the United States Government, but in no event shall the aggregate number of Representatives be increased.

Apportionment may be changed.

§ 5131. III. The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who, after the first election under this Constitution, shall have been citizens of this State for one year, and for six months resident of the Counties from which elected.

Qualification of members.

§ 5132. IV. The Presiding Officer of the House of Representatives shall be styled the Speaker of the House of Representatives, and shall be elected, *viva voce*, from the body.

Speaker of the House.

§ 5133. V. The House of Representatives shall have the sole power to impeach all persons who shall have been, or may be, in office.

Impeachment.

§ 5134. VI. All bills for raising revenue, or appropriating money, shall originate in the House of Representatives, but the Senate may propose, or concur in amendments as in other bills.

Revenue.

SECTION IV.

SECTION.

- 5135. Election and return of Members.
- 5136. May punish for contempts.
- 5137. Members free from arrest.
- 5138. Journal of each House.
- 5139. Passing bills.

SECTION.

- 5140. Acts—by whom signed.
- 5141. Adjournments.
- 5142. Officers—their compensation.
- 5143. Yeas and nays.
- 5144. Oath of Members.

§ 5135. I. Each House shall be the judge of the election, returns, and qualifications of its members, and shall have power to punish them for disorderly behavior or misconduct, by censure, fine, imprisonment, or expulsion; but no member shall be expelled, except by a vote of two-thirds of the House from which he is expelled.

Elections, returns and qualifications.

§ 5136. II. Each House may punish, by imprisonment, not extending beyond the session, any person, not a member, who shall be guilty of a contempt by any disorderly behavior in its

Each House may punish offenders.

Article III.—Legislative Department.

presence, or who, during the session, shall threaten injury to the person, or estate of any member for anything said, or done, in either House, or who shall assault any member going to, or returning therefrom, or who shall rescue, or attempt to rescue, any person arrested by order of either House.

Exempt from arrest. § 5137. III. The members of both Houses shall be free from arrest during their attendance on the General Assembly, and in going to, or returning therefrom, except for treason, felony, larceny, or breach of the peace; and no member shall be liable to answer in any other place for anything spoken in debate in either House.

Journals of each House. § 5138. IV. Each House shall keep a Journal of its proceedings and publish it immediately after its adjournment. The yeas and nays of the members on any question shall, at the desire of one-fifth of the members present, be entered on the Journal. The original Journal shall be preserved, after publication, in the office of the Secretary of State, but there shall be no other record thereof.

Bills. § 5139. V. Every bill before it shall pass shall be read three times and on three separate days in each House, unless in cases of actual invasion or insurrection. Nor shall any law, or ordinance pass, which refers to more than one subject-matter, or contains matter different from what is expressed in the title thereof.

Acts—by whom signed. § 5140. VI. All acts shall be signed by the President of the Senate and the Speaker of the House of Representatives; and no bill, ordinance, or resolution, intended to have the effect of a law, which shall have been rejected by either House, shall be again proposed during the same session, under the same, or any other title, without the consent of two-thirds of the House by which the same was rejected.

Adjournments. § 5141. VII. Neither House shall adjourn for more than three days, nor to any other place, without the consent of the other; and in case of disagreement between the two Houses on a question of adjournment, the Governor may adjourn either or both of them.

Officers of each House. § 5142. VIII. The officers of the two Houses, other than the President and Speaker, shall be a Secretary of the Senate, and Clerk of the House, and an Assistant for each, a Journalizing Clerk, two Engrossing and two Enrolling Clerks for each House, and the number shall not be increased except by a vote of the House. And their pay, as well as the pay and mileage of the members, shall be fixed by law.

Their compensation. Yeas and nays. § 5143. IX. Whenever the Constitution requires a vote of two-thirds of either or both Houses for the passing of an act or resolution, the yeas and nays on the passage thereof shall be entered on the Journal, and all votes on confirmations, or refusals to confirm nominations to office by the Governor, shall be by yeas and nays, and the yeas and nays shall be recorded on the Journal.

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§ 5144. X. Every Senator, or Representative, before taking his seat, shall take an oath, or affirmation, to support the Constitution of the United States, and of this State; that he has not practiced any unlawful means, directly or indirectly, to procure his election, and that he has not given, or offered, or promised, or caused to be given, or offered, or promised, to any person, any money, treat, or thing of value, with intent to affect any vote, or to prevent any person voting at the election at which he was elected.

Oath of Senators and Representatives.

SECTION V.

SECTION.

5145. Powers of the General Assembly.

SECTION.

5146. New Counties—Changing lines.

§ 5145. I. The General Assembly shall have power to make all laws and ordinances, consistent with this Constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State.

Powers of the General Assembly.

§ 5146. II. The General Assembly may alter the boundaries of, or lay off and establish new Counties, or abolish Counties, attaching the territory thereof to contiguous Counties, but no new County shall be established except by a vote of two-thirds of each House; nor shall any County be abolished except by a vote of two-thirds of each House, and after the qualified voters of the County shall, at an election held for the purpose, so decide.

Counties.

SECTION VI.

SECTION.

5147. Money—how drawn.
5148. Donations.
5149. Code—how amended.

SECTION.

5150. Stockholders.
5151. Restriction of powers.

§ 5147. I. No money shall be drawn from the Treasury except by appropriation made by law, and a regular statement and account of the receipt and expenditure of all public money, shall be published from time to time, and, also, with the laws passed by each session of the General Assembly.

Money—how drawn from the Treasury.

§ 5148. II. No vote, resolution, law, or order, shall pass, granting a donation, or gratuity, in favor of any person, except by the concurrence of two-thirds of each branch of the General Assembly, nor, by any vote, to a sectarian corporation, or association.

Donations.

§ 5149. III. No law or section of the Code shall be amended or repealed by mere reference to its title, or to the number of the

Code—how amended.

Article IV.—Executive Department.

section in the Code, but the amending or repealing act shall distinctly and fully describe the law to be amended or repealed, as well as the alteration to be made; but this clause shall be construed as directory only, to the General Assembly.

Citizens not compelled to contribute to public improvements. § 5150. IV. No law shall be passed by which a citizen shall be compelled against his consent, directly or indirectly, to become a stockholder in, or contribute to, any railroad or work of public improvement, except in the case of the inhabitants of a corporate town or city. In such cases, the General Assembly may permit the corporate authorities to take such stock, or make such contribution, or engage in such work, after a majority of the qualified voters of such town or city, voting at an election held for the purpose, shall have voted in favor of the same; but not otherwise.

Corporations, precincts, bridges, names—how established, etc. § 5151. V. The General Assembly shall have no power to grant corporate powers and privileges to private companies, except to Banking, Insurance, Railroad, Canal, Navigation, Mining, Express, Lumber, Manufacturing and Telegraph Companies; nor to make, or change, election precincts; nor to establish Bridges or Ferries; nor to change names or legitimate children; but it shall prescribe, by law, the manner in which such powers shall be exercised by the Courts. But no charter for any Bank shall be granted, or extended, and no act passed authorizing the suspension of specie payments by any Bank, except by a vote of two-thirds of the General Assembly. The General Assembly shall pass no law making the State a stockholder in any corporate company; nor shall the credit of the State be granted, or loaned, to aid any company without a provision that the whole property of the Company shall be bound for the security of the State, prior to any other debt, or lien, except to laborers; nor to any Company in which there is not, already, an equal amount invested by private persons; nor for any other object than a work of public improvement. No provision in this Constitution for a two-thirds vote of both Houses of the General Assembly, shall be construed to waive the necessity for the signature of the Governor, as in any other case, except in the case of the two-thirds vote required to override the veto.

Specie payments.

The State shall not be a stockholder; its credit.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION I.

SECTION.

5152. Executive powers.

5153. Governor—how elected, etc.

5154. Qualification of Governor.

SECTION.

5155. Death, Resignation, or Disability.

5156. Oath of Governor.

§ 5152. I. The Executive power shall be vested in a Governor,

Article IV.—Executive Department.

who shall hold his office during the term of four years, and until such time as a successor shall be chosen and qualified. He shall have a competent salary established by law, which shall not be increased, or diminished, during the period for which he shall have been elected; nor shall he receive, within that period, any other emolument from the United States, or either of them, or from any foreign power. Executive power.

§ 5153. II. After the first election, the Governor shall be elected quadrennially, by the persons qualified to vote for members of the General Assembly, on the Tuesday after the first Monday in November, until such time be altered by law, which election shall be held at the places of holding general elections in the several Counties of this State, in the same manner as is prescribed for the election of members of the General Assembly. The returns for every election of Governor, after the first, shall be sealed up by the Managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives, and transmitted to His Excellency, the Governor, or the person exercising the duties of Governor for the time being, who shall, without opening the said returns, cause the same to be laid before the Senate, on the day after the two Houses shall have been organized; and they shall be transmitted by the Senate to the House of Representatives. The members of each branch of the General Assembly shall convene in the Representative Hall, and the President of the Senate and the Speaker of the House of Representatives shall open and publish the returns in the presence of the General Assembly; and the person having the majority of the whole number of votes given shall be declared duly elected Governor of this State; but if no person have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the Legislature to elect, the General Assembly shall immediately elect a Governor *viva voce*; and in all cases of election of a Governor by the General Assembly, a majority of the votes of the members present, shall be necessary for a choice. Contested elections shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law. Governor—how elected.

Returns of his election.

If no majority, Legislature elects.

§ 5154. III. No person shall be eligible to the office of Governor who shall not have been a citizen of the United States fifteen years, and a citizen of this State six years, and who shall not have attained the age of thirty years. Contested elections.

Qualification of Governor.

§ 5155. IV. In case of the death, resignation, or disability of the Governor, the President of the Senate shall exercise the Executive powers of the Government until such disability be removed, or a successor is elected and qualified. And, in case of the death, resignation, or disability of the President of the Senate, the Speaker of the House of Representatives shall exercise the Executive powers of the Government until the removal of the In case of death, resignation or disability of Governor.

Article IV.—Executive Department.

disability, or the election and qualification of a Governor. The General Assembly shall have power to provide by law for filling unexpired terms by a special election.

Oath of Governor. § 5156. V. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will faithfully execute the office of Governor of the State of Georgia, and will, to the best of my ability, preserve, protect and defend the Constitution thereof, and the Constitution of the United States of America."

SECTION II.

SECTION.

- 5157. Commander-in-chief.
- 5158. Pardons and reprieves.
- 5159. Writs of election.
- 5160. Vacancies.
- 5161. Persons once rejected.

SECTION.

- 5162. Revision of bills.
- 5163. Resolutions and orders.
- 5164. State House Officers.
- 5165. Great Seal of the State.
- 5166. May appoint secretaries.

Commander-in-Chief. § 5157. I. The Governor shall be Commander-in-Chief of the Army and Navy of this State and of the Militia thereof.

Pardons. § 5158. II. He shall have power to grant reprieves and pardons, to commute penalties, and to remit any part of a sentence for offences against the State, except in cases of impeachment.

Writs of election. Convocations, etc. § 5159. III. He shall issue writs of election to fill all vacancies that happen in the Senate or House of Representatives, and shall have power to convoke the General Assembly on extraordinary occasions, and shall give them, from time to time, information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem necessary and expedient.

Vacancies. § 5160. IV. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy, unless otherwise provided by law; and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by law, in pursuance thereof.

Nominees rejected. § 5161. V. A person once rejected by the Senate, shall not be re-appointed by the Governor to the same office during the session, or the recess thereafter.

Revision of bills. Two-third vote. § 5162. VI. The Governor shall have the revision of all bills, passed by both Houses, before the same shall become laws, but two-thirds of each House may pass a law, notwithstanding his dissent, and if any bill should not be returned by the Governor within five days (Sunday excepted,) after it has been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return. He may approve any appropriation and disapprove any other appropriation in the same bill, and the latter shall not be effectual, unless passed by two-thirds of each House.

Article V.—Judicial Department.

§ 5163. VII. Every vote, resolution, or order, to which the Resolutions.
concurrence of both Houses may be necessary, except on a ques-
tion of election, or adjournment, shall be presented to the Governor,
and before it shall take effect, be approved by him, or being dis-
approved, shall be re-passed by two-thirds of each House, according
to the rules and limitations prescribed in case of a bill.

§ 5164. VIII. There shall be a Secretary of State, a Com- Secretary of
State, Com-
ptroller Gen-
eral, Treas-
urer and Sur-
veyor Gen-
eral.
ptroller General, a Treasurer and Surveyor General, elected by the
General Assembly, and they shall hold their offices for the like
period as the Governor, and shall have a competent salary, which
shall not be increased, or diminished, during the period for which
they shall have been elected. The General Assembly may, at
any time, consolidate any two of these offices, and require all the
duties to be discharged by one officer.

§ 5165. IX. The Great Seal of the State shall be deposited in Great Seal
of the State.
the office of the Secretary of State, and shall not be affixed to
any instrument of writing but by order of the Governor, or Gen-
eral Assembly; and that now in use shall be the Great Seal of
the State until otherwise provided by law.

§ 5166. X. The Governor shall have power to appoint his own Governor's
Secretaries.
Secretaries, not exceeding two in number, unless more shall be
authorized by the General Assembly.

ARTICLE V.

JUDICIAL DEPARTMENT.

SECTION I.

SECTION 5167—Judicial Powers.

§ 5167. I. The Judicial Powers of this State shall be vested Judicial
power.
in a Supreme Court, Superior Courts, Courts of Ordinary, Jus-
tices of the Peace, Commissioned Notaries Public, and such other
Courts as have been or may be established by law.

SECTION II.

SECTION.

5168. Supreme Court.

5169. Jurisdiction—Sessions.

SECTION.

5170. Cases—how disposed of.

5171. When two judges disagree.

§ 5168. I. The Supreme Court shall consist of three Judges,

Article V.—Judicial Department.

Supreme Court. two of whom shall constitute a quorum. When a majority of the Judges are disqualified from deciding any case, by interest or otherwise, the Governor shall designate certain Judges of the Superior Courts to sit in their stead. At the first appointment of Judges of the Supreme Court, under this Constitution, one shall be appointed for four years, one for eight years, and one for twelve years; but all subsequent appointments, except to fill unexpired terms, shall be for the term of twelve years.

Jurisdiction. § 5169. II. The Supreme Court shall have no original jurisdiction, but shall be a Court alone for the trial and correction of errors from the Superior Courts and from the City Courts of Savannah and Augusta, and such other like Courts as may be hereafter established in other cities; and shall sit at the seat of Sessions. Government at such times in each year as shall be prescribed by law, for the trial and determination of writs of error from said Superior and City Courts. The days on which the cases from the several Circuit and City Courts shall be taken up by the Court, shall be fixed by law.

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Cases—how disposed of. § 5170. III. The Supreme Court shall dispose of every case at the first or second term after such writ of error is brought; and in case the plaintiff in error shall not be prepared at the first term to prosecute the case, unless prevented by Providential cause, it shall be stricken from the docket, and the judgment below shall stand affirmed. In any case, the Court may, in its discretion, withhold its judgment until the next term after the same is argued.

If only two Judges. § 5171. IV. When only two Judges sit in any case, and they disagree, the judgment below shall stand affirmed.

SECTION III.

SECTION.

5172. Judges of the Superior Court.
5173. Jurisdiction.

SECTION.

5174. Appeals, mistrials, etc.
5175. Sessions.

Judges of the Superior Court. § 5172. I. There shall be a Judge of the Superior Courts for each Judicial Circuit. He may act in other Circuits when authorized by law. At the first appointment of such Judges under this Constitution, one-half of the number (as near as may be) shall be appointed for four years, and the other half for eight years; but all subsequent appointments, except to fill unexpired terms, shall be for the term of eight years.

Jurisdiction. § 5173. II. The Superior Courts shall have exclusive jurisdiction in cases of divorce; in criminal cases, where the offender is subjected to loss of life or confinement in the Penitentiary; in cases respecting titles to land and equity cases, except as hereinafter provided; but the General Assembly shall have power to

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merge the Common Law and Equity Jurisdiction of said Courts. Said Courts shall have jurisdiction in all other civil cases, except as hereinafter provided. They shall have appellate jurisdiction in all such cases as may be provided by law. They shall have power to correct errors in Inferior Judicatories, by writ of *certiorari*, which shall only issue on the sanction of the Judge; and to issue writs of *mandamus*, prohibition, *scire facias*, and all other writs that may be necessary for carrying their powers fully into effect, and shall have such other powers as shall be conferred on them by law.

§ 5174. III. There shall be no appeal from one jury in the Superior Courts to another; but the Court may grant new trials on legal grounds. The Court shall render judgment without the verdict of a jury in all civil cases, founded on contract, where an issuable defence is not filed on oath. Appeals;
new trials;
judgment.

§ 5175. IV. The Superior Courts shall sit in each County not less than twice in each year, at such times as have been, or may be, appointed by law. Sessions.

SECTION IV.

SECTION.

- 5176. District Judge and Attorneys.
- 5177. Criminal jurisdiction.
- 5178. Sessions.
- 5179. Mode of trial.

SECTION.

- 5180. Jury trial, when.
- 5181. Civil jurisdiction.
- 5182. Term of office—compensation.

§ 5176. I. Until the General Assembly shall otherwise direct, there shall be a District Judge and a District Attorney for each Senatorial District in this State. District
Judges and
Attorneys.

§ 5177. II. The District Judge shall have jurisdiction to hear and determine all offences not punishable with death or imprisonment in the Penitentiary; and it shall be the duty of the District Attorney to represent the State in all cases before the District Judge. Criminal
jurisdiction.

§ 5178. III. The District Judge shall sit at stated times, not less than once in each month, in each County in his District, for the trial of offences, and at such other times as the General Assembly may direct. Sessions.

§ 5179. IV. Offences shall be tried before the District Judge on a written accusation founded on affidavit; said accusation shall plainly set forth the offence charged, and shall contain the name of the accuser, and be signed by the District Attorney. Accusation.

§ 5180. V. There shall be no jury trial before the District Judge except when demanded by the accused, in which case the jury shall consist of seven. Jury.

Article V.—Judicial Department.

§ 5181. VI. Such civil jurisdiction may be conferred on the District Judges as the General Assembly may direct.

Civil jurisdiction.

Term of office and compensation.

§ 5182. VII. The District Judges and Attorneys shall hold their offices for a period of four years, and shall receive for their services such stated compensation, in their respective Districts, as may be provided by law, but in no event shall their compensation be in anywise dependent on fines, forfeitures, or costs.

SECTION V.

SECTION.

5183. Court of Ordinary.

5184. Powers of.

SECTION.

5185. Term of office.

Probate powers.

§ 5183. I. The powers of a Court of Ordinary and of Probate shall be vested in an Ordinary for each County, from whose decision there may be an appeal to the Superior Court, under regulations prescribed by law.

§ 5184. II. The Courts of Ordinary shall have such powers in relation to roads, bridges, ferries, public buildings, paupers, County officers, County funds, and taxes, and other matters, as shall be conferred on them by law.

§ 5185. III. The Ordinary shall hold his office for the term of four years, and until his successor is elected and qualified.

Term of office.

SECTION VI.

SECTION.

5186. Justices of the Peace.

5187. Jurisdiction.

SECTION.

5188. Appeals.

5189. Notaries Public.

§ 5186. I. There shall be in each District, one Justice of the Peace, whose official term, except when elected to fill an unexpired term, shall be four years.

Justice of the peace.

§ 5187. II. The Justices of the Peace shall have jurisdiction, except as hereinafter provided, in all civil cases where the principal sum claimed does not exceed one hundred dollars, and may sit at any time for the trial of such cases; but in cases where the sum claimed is more than fifty dollars, there may be an appeal to the Superior Court, under such regulations as may be prescribed by law.

Jurisdiction.

Appeals.

§ 5188. III. There shall be no appeal to a jury from the decision of a Justice of the Peace, except as provided in the foregoing paragraph.

§ 5189. IV. Notaries Public may be appointed and commis-

Article V.—Judicial Department.

sioned by the Governor, not to exceed one for each Militia District, for a term of four years, and shall be, *ex officio*, Justices of the Peace. Notaries
Public.

SECTION VII.

SECTION.

5190. Attorney-General.

SECTION.

5191. His duty.

§ 5190. I. There shall be an Attorney General of the State, whose official term, except when appointed to fill an unexpired term, shall be four years. Attorney
General.

§ 5191. II. It shall be the duty of the Attorney General to act as the legal adviser of the Executive Department, to represent the State in all civil and criminal cases in the Supreme and Superior Courts, when required by the Governor, and to perform such other services as shall be required of him by law. His duty.

SECTION VIII.

SECTION.

5192. Solicitors General.

SECTION.

5193. Their duty.

§ 5192. I. There shall be a Solicitor General for each Judicial Circuit, whose official term, except when appointed to fill an unexpired term, shall be four years. Solicitors
General.

§ 5193. II. It shall be the duty of the Solicitor General to represent the State in all cases in the Superior Courts of his Circuit, and in all cases taken up from his Circuit to the Supreme Court, and to perform such other services as shall be required of him by law. Their duty.

SECTION IX.

SECTION.

5194. Judicial Officers—how appointed.

SECTION.

5195. Justices, Election of.

§ 5194. I. The Judges of the Supreme and the Superior Courts, the Attorney General, Solicitors General and the District Judges, and Attorneys shall be appointed by the Governor, with the advice and consent of the Senate, and shall be removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon. Judicial
officers—
how appoint-
ed and re-
moved.

§ 5195. II. Justices of the Peace shall be elected by the legal

Article V.—Judicial Department.

Justices voters in their respective Districts, and shall be commissioned by
 elected and the Governor. They shall be removable on conviction for mal-
 removable. practice in office.

SECTION X.

SECTION.

5196. Compensation of Judicial officers.

5197. Of District Judges and Attorneys.

SECTION.

5198. Qualifications of Judges and Attorney General.

Compensa-
tion of ju-
dicial officers

§ 5196. I. The Judges of the Supreme and Superior Courts, and the Attorney and Solicitors General shall have, out of the State Treasury, adequate and honorable salaries on the specie basis, which shall not be increased or diminished during their continuance in office. The District Judges and District Attorneys shall receive, out of the Treasuries of the several Counties of their Districts, adequate compensation, on the specie basis, which shall not be increased or diminished during their term of office; but said Judges shall not receive any other perquisites, or emoluments whatever, from parties, or others, on account of any duty required of them.

Of District
Judges and
Attorneys.

§ 5197. II. The General Assembly shall provide for the equitable apportionment of the compensation of the District Judges and Attorneys between the Counties composing their Districts, and shall require the moneys arising from fines and forfeitures in the District Courts to be paid into the Treasuries thereof.

Qualifica-
tions of
Judges and
Attorney
General.

§ 5198. III. No person shall be Judge of the Supreme or Superior Courts, or Attorney General, unless, at the time of his appointment, he shall have attained the age of thirty years, and shall have been a citizen of this State three years, and have practiced law for seven years.

SECTION XI.

SECTION 5199.—Divorce.

Divorce.

§ 5199. I. No total divorce shall be granted except on the concurrent verdicts of two juries. When a divorce is granted, the jury rendering the final verdict shall determine the rights and disabilities of the parties, subject to the revision of the Court.

SECTION XII.

SECTION.

5200. Divorce cases, where tried.

5201. Criminals, where tried.

5202. Land titles, where tried.

5203. Equity cases, where tried.

SECTION.

5204. Suits against joint obligors.

5205. Suits against maker and indorser.

5206. All other cases.

Article V.—Judicial Department.

§ 5200. I. Divorce cases shall be tried in the County where the defendant resides, if a resident of this State. Where tried.

§ 5201. II. Criminal cases shall be tried in the County where the crime was committed, except cases in the Superior Courts, when the presiding Judge is satisfied that an impartial jury cannot be obtained in such County. Criminal's—
where tried.

§ 5202. III. Cases respecting titles to land shall be tried in the County where the land lies, except where a single tract is divided by a County line, in which case the Superior Court of either County shall have jurisdiction. Land titles
—where tried

§ 5203. IV. Equity cases shall be tried in the County where a defendant resides against whom substantial relief is prayed. Equity cases
—where tried

§ 5204. V. Suits against joint obligors, joint promissor, co-partners, or joint trespassers residing in different Counties may be tried in either County. Suits *versus*
joint oblig-
ors, et c. —
where tried.

§ 5205. VI. Suits against the maker and indorser of promissory notes, or other like instruments, residing in different Counties, shall be tried in the County where the maker resides. Suits *versus*
maker and
indorser.

§ 5206. VII. All other cases shall be tried in the County where the defendant resides. All other
cases.

SECTION XIII.

SECTION.

5207. Right of trial by jury.

SECTION.

5208. Jurors.

§ 5207. I. The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate. Right of tri-
al by jury.

§ 5208. II. The General Assembly shall provide by law for the selection of upright and intelligent persons to serve as Jurors. There shall be no distinction between the classes of persons who compose grand and petit juries. Jurors shall receive adequate compensation for their services, to be prescribed by law. Jurors.

SECTION XIV.

SECTION 5209.—Inferior Courts abolished.

§ 5209. I. The Courts heretofore existing in this State, styled Inferior Courts, are abolished, and their unfinished business and the duties of the Justices thereof are transferred to such tribunals as the General Assembly may designate. Inferior
Courts abol-
ished.

SECTION XV.

SECTION 5210.—County Commissioners.

§ 5210. I. The General Assembly shall have power to provide

Article V.—Judicial Department.

County
Commissioners. for the creation of County Commissioners in such Counties as may require them, and to define their duties.

SECTION XVI.

SECTION 5211.—County Courts abolished.

County
Courts abolished. § 5211. I. All Courts not specially mentioned by name in the first Section of this Article, may be abolished in any County, at the discretion of the General Assembly, and the County Courts now existing in Georgia are hereby abolished.

SECTION XVII.

SECTION.

5212. Limitation of jurisdiction.

5213. Confederate contracts.

SECTION.

5214. Tax on debts.

Jurisdiction by Legislature. § 5212. I. No Court or officer shall have, nor shall the General Assembly give jurisdiction or authority to try, or give judgment on, or enforce any debt, the consideration of which was a slave or slaves, or the hire thereof.

Confederate contracts. § 5213. II. All contracts made and not executed during the late rebellion, with the intention, and for the purpose, of aiding and encouraging said rebellion, or where it was the purpose and intention of any one of the parties to such contract to aid or encourage such rebellion, and that fact was known to the other party, whether said contract was made by any person or corporation with the State or Confederate States, or by a corporation with a natural person, or between two or more natural persons, are hereby declared to have been, and to be illegal; and all bonds, deeds, promissory notes, bills, or other evidences of debt, made or executed by the parties to such contract, or either of them in connection with such illegal contract, or as the consideration therefor or in furtherance thereof, are hereby declared *null* and *void*, and shall be so held in all Courts in this State when attempt shall be made to enforce any such contract or give validity to any such obligation or evidence of debt. And in all cases when the defendant or any one interested in the event of the suit will make a plea, supported by his or her affidavit, that he or she has reason to believe that the obligation or evidence of indebtedness upon which the suit is predicated, or some part thereof, has been given or used for the illegal purpose aforesaid, the burden of proof shall be upon the plaintiff to satisfy the Court and Jury that the bond, deed, note, bill or other evidence of indebtedness upon which said suit is brought, is or are not, nor is any part thereof, founded upon, or

Article VI.—Education.

in any way connected with any such illegal contract, and has not been used in aid of the rebellion, and the date of such bond, deed, note, bill or other evidence of indebtedness shall not be evidence that it has, or has not, since its date, been issued, transferred or used in aid of the rebellion.

§ 5214. III. It shall be in the power of the General Assembly to assess and collect upon all debts, judgments, or causes of action when due, founded on any contract made or implied before the first day of June, 1865, in the hands of any one in his own right, or as trustee, agent or Attorney of another, on or after the first day of January, 1868, a tax of not exceeding 25 per cent., to be paid by the creditor on pain of the forfeiture of the debt, but chargeable by him as to one-half thereof against the debtor, and collectable with the debt: *Provided*, That this tax shall not be collected if the debt or cause of action be abandoned or settled without legal process, or, if in judgment, be settled without levy and sale: *And provided further*, That this tax shall not be levied so long as the Courts of this State shall not have jurisdiction of such debts or causes of action.

Tax on debts.

ARTICLE VI.

EDUCATION.

SECTION.

5215. General Education.

5216. School Commissioner.

SECTION.

5217. Educational fund.

§ 5215. I. The General Assembly, at its first session after the adoption of this Constitution, shall provide a thorough system of General Education to be forever free to all children of the State, the expense of which shall be provided for by taxation, or otherwise.

General education.

§ 5216. II. The office of State School Commissioner is hereby created. He shall be appointed by the Governor, with the consent of the Senate, and shall hold his office for the same term as the Governor. The General Assembly shall provide for the said Commissioner a competent salary and necessary clerks. He shall keep his office at the Seat of Government.

School Commissioner.

§ 5217. III. The Poll tax allowed by this Constitution, any Educational fund now belonging to this State—except the endowment of and debt due to, the State University—or that may hereafter be obtained in any way, a special tax on Shows and Exhibitions, and on the sale of spirituous and malt liquors—which the General Assembly is hereby authorized to assess—and the proceeds from the commutation for militia service, are hereby set apart and devoted to the support of Common Schools. And if the provision herein made shall, at any time, prove insufficient, the General

Education-
al Fund.

Article VII.—Homestead and Exemption.

Assembly shall have power to levy such general tax upon the property of the State, as may be necessary for the support of said School System. And there shall be established, as soon as practicable, one or more Common Schools in each School District in this State.

ARTICLE VII.

HOMESTEAD AND EXEMPTION.

SECTION.

5218. Homestead.

SECTION.

5219. Wife's estate.

Homestead.

§ 5218. I. Each head of a family, or guardian, or trustee, of a family of minor children, shall be entitled to a homestead of realty to the value of two thousand dollars, in specie, and personal property to the value of one thousand dollars in specie, both to be valued at the time they are set apart. And no Court, or Ministerial officer in this State, shall ever have jurisdiction, or authority, to enforce any judgment, decree, or execution against said property so set apart—including such improvements as may be made thereon, from time to time—except for taxes, money borrowed and expended in the improvement of the homestead, or for the purchase money of the same, and for labor done thereon, or material furnished therefor, or removal of encumbrances thereon. And it shall be the duty of the General Assembly, as early as practicable, to provide, by law, for the setting apart and valuation of said property, and to enact laws for the full and complete protection and security of the same to the sole use and benefit of said families as aforesaid.

Wife's estate.

§ 5219. II. All property of the wife, in her possession at the time of her marriage, and all property given to, inherited, or acquired by her, shall remain her separate property, and not be liable for the debts of her husband.

ARTICLE VIII.

MILITIA.

SECTION.

5220. Militia.

5221. Volunteers.

SECTION.

5222. Exemption.

Militia.

§ 5220. I. The Militia shall consist of all able bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law; subject to the paramount authority of Congress over this subject.

Authority of Congress.

Article IX.—County Officers.

§ 5221. II. Volunteer Companies of Cavalry, Infantry or Volunteers. Artillery, may be formed in such manner, and with such restrictions, as may be provided by law.

§ 5222 III. No person conscientiously opposed to bearing arms, shall be compelled to do Militia duty, but such person shall pay an equivalent for exemption; the amount to be prescribed by law and appropriated to the Common School Fund. Exemption.

ARTICLE IX.

COUNTY OFFICERS.

SECTION 5223.—County Officers.

§ 5223. I. The County officers recognized as existing by the laws of this State, and not abolished by this Constitution, shall, where not otherwise provided for in this Constitution, be elected by the qualified voters of their respective Counties or Districts, and shall hold their offices for two years. They shall be removable on conviction for malpractice in office, or on the address of two-thirds of the Senate. County officers.

ARTICLE X.

SEAT OF GOVERNMENT.

SECTION.

5224. Seat of Government.

SECTION.

5225. Removal.

§ 5224. I. The seat of Government of this State, from and after the date of the ratification of this Constitution, shall be in the City of Atlanta, and the General Assembly shall provide for the erection of a new Capitol, and such other buildings as the public welfare may require. Seat of Government.

§ 5225. II. The General Assembly shall have power to provide for the temporary removal of the Seat of Government in case of invasion, pestilence, or other emergency. Removal.

ARTICLE XI.

THE LAWS OF GENERAL OPERATION IN FORCE IN THIS STATE ARE:

SECTION.

5226. The Constitution of United States.
5227. Constitution of Georgia.
5228. Irwin's Code.
5229. Local and private acts.
5230. Legal rights.
5231. Court Records.

SECTION.

5232. Records of Inferior Courts.
5233. City Courts.
5234. Military appointees.
5235. Confirmatory acts.
5236. Amendments by Congress.
5237. Limitation of Ordinances.

Article XL.—Laws of General Operation.

Constitu-
tion, etc. of
the U. S. § 5226. I. As the Supreme Law: The Constitution of the United States, the laws of the United States in pursuance thereof, and all treaties made under the authority of the United States.

This Con-
stitution. § 5227. II. As next in authority thereto: This Constitution.

Irwin's
Code. § 5228. III. In subordination to the foregoing: All Acts passed by any legislative body, sitting in this State as such, since the 19th day of January, 1861, including that body of laws known as the Code of Georgia, and the acts amendatory thereof, or passed since that time, which said Code and acts are embodied in the printed book known as "Irwin's Code;" and also so much of the Common and Statute laws of England and of the Statute laws of Georgia, as were in force in this State on the 19th day of December, 1860, as are not superseded by said Code, though not embodied therein, except so much of the said several Statutes, Code and Laws as may be inconsistent with the supreme law herein recognized, or may have been passed in aid of the late rebellion against the United States, or may be obsolete, or may refer to persons held in slavery, which excepted laws are inoperative and void; and any future General Assembly shall be competent to alter or repeal (if not herein prohibited) any portion of the laws declared to be of force in this third specification of this clause of this Article; and if in any of said laws herein declared of force, the word "Confederate" occurs before the word States, such law is hereby amended by substituting the word "United" for the word "Confederate."

Local and
private acts. § 5229. IV. Local and private acts passed for the benefit of counties, cities, towns, corporations and private persons, not inconsistent with the Supreme Law, nor with this Constitution, and which have not expired, nor been repealed, shall have the force of Statute Law, subject to Judicial decision as to their validity when passed, and to any limitations imposed by their own terms.

Legal rights. § 5230. V. All rights, privileges and immunities which may have vested in, or accrued to, any person or persons, or corporation in his, her, or their own right, or in any fiduciary capacity, under any act of any legislative body sitting in this State as such, or of any decree, judgment or order of any Court sitting in this State, under the laws then of force and operation therein—and recognized by the people as a Court of competent jurisdiction, since the 19th day of January, 1861, shall be held inviolate by all the Courts of this State, unless attacked for fraud, or unless otherwise declared invalid by, or according to, this Constitution.

Court re-
cords. § 5231. VI. The records, dockets, books, papers, and proceedings of any Court or office existing in this State by the laws thereof on the 19th of January, 1861, or purporting to exist by said laws, and recognized and generally obeyed by the people, as such, since the said time, and before the several Courts and officers provided for by this Constitution shall have gone into actual operation, shall be transferred to the several Courts and offices of the

Article XI.—Laws of General Force.

same name or functions by this Constitution provided for, and shall have force and be executed, perfected and performed therein, and thereby, as follows, and not otherwise, to-wit:

Final judgments, decrees, proceedings and acts fully executed and performed, or not requiring performance or execution, shall have full force and effect as though no interruption had taken place in the legal succession of said courts and offices, except as herein otherwise provided. Proceedings not final, and judgments and decrees not fully executed or performed, shall proceed and be performed in such cases, and such cases only, as this Constitution, or the laws made in pursuance thereof, confer jurisdiction and authority over the causes of actions on which said cases, judgments, decrees, or proceedings, civil or criminal, are founded: *Provided*, that all said judgments, decrees and proceedings shall be subject to be set aside, or reversed, or vacated, by proceedings in the several courts having custody of the records, as though they were the judgments of said courts, and shall be subject always to be explained as to the meaning of the word dollar or dollars, as used in the same; and no motion for a new trial, bill of review, or other proceeding, to vacate any judgment, order or decree, made since the 19th of January, 1861, by any of said courts for fraud, illegality, or error of law, shall be denied, by reason of the same not having been moved in time; *Provided*, said motion or application is made in twelve months from the adoption of this Constitution.

Judicial
proceedings.

§ 5232. VII. The books, papers and proceedings of the Inferior Courts shall be transferred to, and remain in, the control of the Ordinaries, who shall perform the duties of said Courts until otherwise provided by law. The books, papers and proceedings of the County Courts, and the unfinished business thereof, shall be transferred to the Superior Courts, and the same shall be finished and performed by the said Superior Courts and the officers thereof, in such cases, and in such cases only, as the said Courts are, by this Constitution, or the laws made in pursuance thereof, granted jurisdiction over the subject-matter or debts on which said cases and judgments, civil or criminal, are founded.

Records of
the Inferior
Courts.

Of County
Courts.

§ 5233. VIII. The cases pending, and the judgments had and made, in the City Courts of Savannah and Augusta, and in the various Justices' Courts in this State, shall be finished, and the judgments performed by the City Courts, and officers and justices provided by this Constitution, in such cases, and such only, as by this Constitution jurisdiction is given to said Courts and officers, over the causes of action on which they are founded.

City Courts.

§ 5234. IX. The judgments and proceedings of Courts, and acts of officers within their jurisdiction, as provided by law, shall be valid, notwithstanding the Judges of said Courts or the said officers were appointed by the Military Authorities of the United States; and any of said judgments, or acts, or proceedings made,

Judicial
officers ap-
pointed by
military au-
thority.

Article XII.—Amendments.

or done, under or by virtue of, or in accordance with, the orders of said Military Authorities, duly made, are as valid as if done under a law of this State.

§ 5235. X. These several acts of confirmation shall not be construed to divest any vested right, nor to make any act criminal, otherwise not criminal, but they shall be construed as acts of peace, and to prevent injustice: *Provided*, That nothing in this Constitution shall be so construed as to make valid any acts done by, or before, any such *de facto* officer, which would, by legalizing such acts, render that criminal which was not criminal when done, or cause any act not legally criminal, when done, to become criminal, by giving validity to such act after it was done; but all such acts shall be held by the Courts to be null and void.

§ 5236. XI. Should this Constitution be ratified by the people, and Congress accept the same with any qualifications or conditions, the Government herein provided for, and the officers elected, shall nevertheless exist and continue in the exercise of their several functions, as the Government of this State, so far as the same may be consistent with the action of the United States in the premises.

§ 5237. XII. The ordinances of this Convention on the subject of the first election, and the first General Assembly, shall have the force of laws, until they expire by their own limitation, and all other ordinances of a mere Legislative character, shall have the force of laws until otherwise provided by the General Assembly.

ARTICLE XII.

AMENDMENTS TO THE CONSTITUTION.

SECTION 5238.—Amendment to the Constitution.

§ 5238. I. This Constitution may be amended by a two-thirds vote of two successive Legislatures, and by a submission of the amendment to the qualified voters for final ratification. But the General Assembly shall not call a Convention of the people in the election of delegates to which any person, qualified to vote by this Constitution, shall be disqualified. And the representation in said Convention shall be based on population. Nor shall the right of suffrage ever be taken from any person qualified by this Constitution to vote.

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